United States Court of Appeals
for the Second Circuit

APPENDIX

76-4147

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4147

AAACON AUTO TRANSPORT, INC.
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION
and UNITED STATES OF AMERICA
Respondents.

B

P/s

ON PETITION FOR REVIEW OF AN ORDER OF
THE INTERSTATE COMMERCE COMMISSION

RECORD APPENDIX

VOLUME 1

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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AAACon Auto Transport, Inc.)
)
Petitioner,)
)
v.) No. 76-4147
)
INTERSTATE COMMERCE COMMISSION)
and UNITED STATES OF AMERICA)
)
Respondents.)

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APPLICATION OF FREIGHT FORWARDER

No. FF 359 AUTO TRIP USA, INC. FREIGHT FORWARDER APPLICATION, filed December 11, 1968.

Applicant: AUTO TRIP USA, INC.
147 West 42nd Street
New York, N. Y. 10036

Authority sought under Part IV of the Interstate Commerce Act as a freight forwarder in interstate or foreign commerce, through the use of facilities of common carriers by railroad, express, water, air, or motor vehicle in the transportation of used passenger automobiles, with or without baggage, personal effects, and sporting equipment, between points in the United States.

APPENDIX 1

BEFORE THE INTERSTATE COMMERCE COMMISSION

---x

In the Matter of: :

AUTO TRIP USA, Inc. : DOCKET No.
147 W. 42nd Street - New York, N.Y. FF-359
:

---x

In the Matter of: :

AAACON AUTO TRANSPORT, INC. : DOCKET NO.
147 W. 42nd Street - New York, N.Y. MC-125808
Common Carrier - Irregular Routes : (Sub-No. 2)
:

---x

Room F-2220
26 Federal Plaza
New York, New York
Monday, August 4, 1969.

Met, pursuant to notice, at 9:30 o'clock a.m.

BEFORE:

DONALD R. SUTHERLAND, Examiner.

APPEARANCES:

MORTON E. KIEL, 140 Cedar Street, New York, N. Y. 10006, appearing for Auto Trip USA, Inc. and Aaacon Auto Transport, Inc., applicants.

WILMER B. HILL, 705 McLachlen Bank Building, 666-11th Street, N.W., Washington, D. C. 20001, appearing for F. J. Boutell Driveaway Co., Inc. and in both proceedings, and for Nu-Car Carriers, Inc. in the AAACON proceeding only, protestants.

APPENDIX 2

APPEARANCES: (continued)

BILL R. DAVIS, Suite 1600, First Federal Building, Atlanta, Georgia, appearing for Motor Convoy, Inc., protestant, in Docket No. MC-125808 (Sub 2) only.

MARTIN SACK, Jr., 1754 Gulf Life Tower, Jacksonville, Florida 32207, appearing for National Trucking Company, protestant, in Docket No. MC-125808 (Sub 2) only.

HARRY ROSS, 848 Warner Building, Washington, D. C. 20004, appearing for Auto Driveaway Co. and Insured Transporters, Inc., protestants.

EUGENE C. EWALD, Suite 1700, 1 Woodward Avenue, Detroit, Michigan 48013, appearing for Automobile Transport, Inc., Baker Driveaway Co., Dealers Transit Co., Kenosha Auto Transport Corp., M & G Convoy, Inc., Gate City Transport Co., Square Deal Cartage Co., Howard Sober, Inc., National Automobile Transporters Association, protestants.

EDWARD M. ALFANO, 2 West 45th Street, New York, New York 10036, appearing for Dependable Car Travel Service, Inc., protestant.

THOMAS D. SHEA, 156 William Street, New York, New York 10038, appearing for Acme Fast Freight, Inc., International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co., Inc. and Universal Carloading & Distributing Co., Inc., protestants, in Docket No. FF-359 only.

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Protestant's:		
No. 8 (Counsel Alfano)	84	85
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PROCEEDINGS

Exam. Sutherland: The hearing will come to order.

The Interstate Commerce Commission has set for hearing at this time and place No. FF-359, Auto Trip USA, Inc., for authority under Part IV of the Interstate Commerce Act as a freight forwarder in interstate or foreign commerce, through the use of facilities of common carriers by railroad, express, water, air or motor vehicle in the transportation of used passenger automobiles with or without baggage, personal effects, and sporting equipment, between points in the United States.

At the same time the Commission has set MC-125808 (Sub No. 2), AAACon Auto Transport, Inc., for authority to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Used passenger automobiles, with or without baggage, personal effects and sporting equipment, in driveaway service, in secondary movements, between points in the United States restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having a prior movement by rail."

There is a notation with regard to this application that common control may be involved.

We will now get the appearances. Who appears for the applicant?

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Mr. Kiel: Morton E. Kiel, 140 Cedar Street, New York, New York 10006. I appear in both proceedings on behalf of the applicants. I have been admitted to practice.

Exam. Sutherland: Who appears for the protestants?

Mr. Hill: May the record show the appearance of Wilmer B. Hill, 705 McLachlen Bank Building, 666-11th Street, N.W., Washington, D. C. 20001, appearing for F. J. Boutell Driveaway Co., Inc., and in both proceedings, and for Nu-Car Carriers, Inc. in the AAACon proceeding only.

A protest was filed in behalf of M & G Convoy, Inc. in the forwarder application proceeding. I would withdraw that protest at this time. I am an attorney-at-law and admitted to practice before this Commission.

Exam. Sutherland: What carrier was that you are withdrawing on?

Mr. Hill: M & G Convoy, Inc.

Mr. Kiel: May I have a moment? I have no record of Nu-Car Carriers as a protestant. May I have a momant, please?

Exam. Sutherland: Yes. I don't see that in my list of protests, too.

Mr. Hill: I have our file copy here. I don't understand why it was not in the docket.

Exam. Sutherland: I had two lists here, Mr. Hill, and it is in the docket of MC-125808 (Sub 2).

Mr. Hill: That is the only one I made an appearance for.

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I did not make an appearance for that company in the forwarder company proceeding, only in the motor carrier.

Exam. Sutherland: That is right.

Mr. Kiel: My record still does not show I received a copy of it.

Mr. Hill: I have it here. I have a file copy and it indicates a copy was served on Mr. Kiel. If he did not receive it I have no explanation for that. It is dated February 20, 1969.

Exam. Sutherland: Apparently there is a copy in the docket because when I left the Secretary made a list of the protestants and that is on the list. We will proceed with the appearances.

Mr. Davis: If the Examiner please, I am Bill R. Davis, Suite 1600, First Federal Building, Atlanta, Georgia. I am an attorney-at-law licensed to practice before the Commission and I represent Motor Convoy, Inc.

Exam. Sutherland: Mr. Davis, your appearace is in MC-125808 (Sub No. 2)?

Mr. Davis: Yes.

Exam. Sutherland: Next.

Mr. Sack: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, Florida 32207. I am an attorney admitted to practice before the Commission. I appear in behalf of National Trucking Company, protestant in the AAACon proceeding

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only.

Exam. Sutherland: Next.

Mr. Ross: Harry Ross, 848 Warner Building, Washington, D.C. 20004. I am an attorney admitted to practice before the commission. I appear in both proceedings. In AAACon in behalf of Insured Transporters, Inc. and Auto Driveaway Co. and in FF-359 on behalf of Insured Transporters, Inc. only.

Exam. Sutherland: Next.

Mr. Ewald: Eugene C. Ewald, Suite 1700, 1 Woodward Avenue, Detroit, Michigan. I am appearing for Automobile Transport, Inc., Baker Driveaway Co., Dealers Transit Co., Kenosha Auto Transport Corp., M & G Convoy, Inc., Gate City Transport Co., Square Deal Cartage Co., Howard Sober, Inc., National Automobile Transporters Association, in the AAACon proceeding, protestants. I am also appearing on behalf of Howard Sober, Inc. in the Auto Trip USA, Inc. proceeding, FF-359.

Mr. Examiner, I filed a petition for leave to intervene on behalf of the National Automobile Transporters Association, Automobile Transport, Inc., Dealers Transit, Inc. and Kenosha Auto Transport Corporation. I filed it only Thursday of last week with the Commission. I did serve a copy of the petition on the representative of applicant, Mr. Kiel, and on applicant itself. I have also copies of the

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petition that I would like to give to you and to furnish to the other counsel in the hearing room.

Exam. Sutherland: Will you do that?

Mr. Ewald: Yes, sir.

Exam. Sutherland: Mr. Ewald, did you say you filed this with the Commission?

Mr. Ewald: Yes, I did. I mailed it to the Commission on Thursday.

Exam. Sutherland: Is it anything that they might take action on?

Mr. Ewald: As I read the rules of practice if the Commission does not receive it in time to take action before the hearing we should file it at the hearing.

Exam. Sutherland: My point is it would not be acted on in the Commission at the same time there would be action on it here in the hearing room?

Mr. Ewald: No, I don't believe they would act on it before you would.

Mr. Kiel: I don't believe so either. I am perfectly agreeable to having the matter submitted to you and I think we would be agreeable to abide by whatever decision you make in the matter.

Exam. Sutherland: This stipulation is just in the freight forwarder application?

Mr. Ewald: Yes, just in the freight forwarder. All of these carriers are protestants in the AAACon case.

Exam. Sutherland: You have no objection?

Mr. Kiel: Yes. I take objection to the petition for leave to intervene. I would like to argue it.

Exam. Sutherland: We will get the rest of the appearances and then we will take that up.

Mr. Alfano: If the Examiner please, my name is Edward M. Alfano, 2 West 45th Street, New York, New York 10036. I represent Dependable Car Travel Service, Inc. in both proceedings. I am an attorney-at-law admitted to practice before the Commission.

Exam.Sutherland: All right.

Mr. Shea: My name is Thomas D. Shea, 156 William Street, New York, New York 10038. I am an attorney admitted to practice before this Commission. I am appearing only in Docket FF-359, and I am representing Acme Fast Freight, Inc., International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co., Inc. and Universal Carloading & Distributing Co., Inc.

Exam. Sutherland: Any further appearances?

(No response.)

Exam. Sutherland: There appear to be none.

I think we can take up this matter of the petition then, Mr. Kiel.

Mr. Ewald: On behalf of the carriers I mentioned earlier

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in the National Automobile Transporters Association we filed a petition for leave to intervene. I personally did not learn of the application until I was in Washington last week and checking the docket in the AAACon I learned there was this freight forwarder application that was set for hearing before yourself at the same time.

I looked into the records at the Commission and found out that it was being handled by Mr. Kiel and we immediately prepared the written petition pursuant to the Commission's rules of practice.

We have recently filed petitions for leave to intervene on behalf of National Automobile Transporters Association in approximately 15 other freight forwarder matters that we did not originally file protests to. We had not noticed them at the time and not realized the importance to the transportation industry in the freight forwarder applications.

As you know, there are approximately 30 freight forwarder applications that are now seeking to forward used automobiles. Because of this we have filed petitions in these other proceedings and the Commission has allowed us to intervene in the proceedings.

We overlooked this freight forwarder application until I found out about it last week and I immediately prepared a written petition. I do not believe that the allowance of these carriers and the Association to intervene in this proceeding will unduly broaden the issues. All of the carriers that I did file a petition for in the freight forwarder application are already protestants in the AAACon Auto Transport, Inc. Sub 2 proceeding. Also, one of the carriers whom I represent, Howard Sober, Inc., is a protestant also in the Auto Trip USA.

Exam. Sutherland: Mr. Kiel?

Mr. Kiel: Mr. Examiner, I hope that the reason they are filing this petition is not because of me; but, in any event, I object first to the participation in this proceeding by the National Automobile Transporters Association. That is a motor carrier proceeding and freight forwarder proceeding, because they are not a carrier and I don't believe they have any position in a license case. Secondly, with regard to the petition of the motor carriers in the proceeding to intervene in opposition to the freight forwarder proceeding the proceeding is completely dissimiliar from the cases in which the motor carriers have been intervening and which the Commission has been permitting.

Those are the so-called exempt forwarder cases and in each of those instances the carriers basically were seeking authority to transport used household goods and baggage and used automobiles sort of like a tail and these people I don't believe intended to go into the business of actually moving automobiles to the exclusion of other types of merchandise;

so I don't think that there is any relationship.

Further I think that the Commission must consider and the Examiner should consider at least the fact that the Commission has ruled in 285 ICC 239, page 243 --

Exam. Sutherland: 285 what?

Mr. Kiel: ICC 239, that shippers are entitled to freight forwarder service even where there is an abundance of motor carrier service available, and in view of the minimal interest of these motor carriers I think that should be a reason for excluding these carriers.

Further on behalf of the applicant motor carrier we believe we have all of the authority that we require to provide the service that is intended by virtue of this application.

Therefore, I believe that the facts will be such in this proceeding that the motor carrier application will be merely for the purpose of serving as a vehicle for a determination that we are presently authorized to provide the service we are seeking, which, basically, is for the motor carrier applicant to provide pick up and delivery service for the freight forwarder.

We believe that there is no impediment in the certificate presently held by the applicant to provide that service completely, and, secondly, using this also as a vehicle to get a determination that the applicant now has authority to

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provide motor carrier transportation using substituted railroad service for a portion of the haul under Plan 1 of the so-called piggy-back cases; so really the interest of the motor carrier protestants in the AAACon case is minimal and I don't believe it has any real interest in the freight forwarder case and in view of the fact that they failed to take proper steps to make the Commission aware of their interest, if they had any such interest, that their petition for leave to intervene at this late date should not be permitted.

Exam. Sutherland: Do you have anything further to say, Mr. Ewald?

Mr. Ewald: Only that our interest in filing the petition to intervene in the other freight forwarder cases were not based on the household goods or on the unaccompanied baggage as Mr. Kiel would point out to you, but it was specifically on the used automobiles, and our interest in this proceeding in the freight forwarder application is certainly not a minor one but a very important one. All this freight forwarder is seeking is authority on used automobiles.

Exam. Sutherland: When did you say you filed this with the I.C.C.?

Mr. Ewald: Thursday.

Exam. Sutherland: Did you say, Mr. Ewald, in these other applications that are pending that you filed protests in

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those cases?

Mr.Ewald: I filed a petition.

Exam. Sutherland: You mentioned in Part VII of your petition, "within recent months there have been approximately 30 applications for freight forwarder authority".

Mr. Ewald: Yes. We filed protests to approximately 15 of them and 15 of them we did not file timely protests and we filed a petition for leave to intervene in those and our petition was allowed.

Exam. Sutherland: In filing protests have you been selective? I was wondering why in certain ones you filed protests and in others you filed petitions.

Mr. Ewald: We are now filing protests in all freight forwarder applications that seek to handle used automobiles or automobiles of any kind.

Exam. Sutherland: But sticking to these 30 applications, you say you filed protests in a certain number; is that right?

Mr. Ewald: We filed protests to the later application. The original application we overlooked them when the notice was published. When we discovered that we then filed the petition for leave to intervene in those proceedings also.

Exam.Sutherland: So in the 30 applications you have a protest or a petition filed; is that right?

Mr. Ewald: Yes. The petition has been allowed so we are a protestant in all of the cases.

Exam. Sutherland: I believe you stated in your petition that the Commission has allowed National Automobile Transporters Association to intervene in approximately 14 forwarder application proceedings. Are they proceedings similar to this, the same or what?

Mr. Ewald: They are freight forwarder applications that are seeking to forward household goods, used automobiles, and I believe unaccompanied baggage, and, in some cases, display automobiles. As far as the automobile carriers are concerned and as far as we know they are the same in that they are seeking to forward automobiles.

Exam. Sutherland: One other thing. You have in this petition not only National Automobile Transporters Association, but you have Automobile Transport, Inc., Dealers Transit, Inc. and Kenosha Auto Transport Corporation. Have Automobile Transport, Inc., Dealers Transit, Inc. and Kenosha Auto Transport Corporation been permitted to intervene in these other proceedings that you mentioned?

Mr. Ewald: They did not file a petition to intervene. They may be protestants to these other proceedings. That I do not know.

Exam. Sutherland: What I was trying to determine was whether when you talk about these 30 other applications it just involved National Automobile Transporters Association; is that right?

Mr. Ewald: That is all I filed for. Yes, Mr. Examiner.

Exam. Sutherland: But in this petition here you have added on 3 carriers; is that right?

Mr. Ewald: That is right.

Exam. Sutherland: So there is a little difference between this petition and what you filed in the others.

Mr. Ewald: As far as additional carriers are, these carriers are only protestants to the AAACon proceeding, Sub No. 2 proceeding, that is also being heard today.

Exam. Sutherland: Mr. Kiel, do you have anything further before I rule?

Mr. Kiel: The only point is that there is a need to show good cause. That is the rule and in the rules of practice, and there is no good cause shown, just that they would like to intervene and as a salve or maybe a sop the motor carriers are in the motor carrier part of the proceeding. There is a genuine difference between this proceedind and those cases that the Association is involved in. Those cases involve basically household goods movement.

The purpose I believe in including auto forwarding in those household goods applications is to take them out of the exempt category because if you are just going to forward used household goods you are going to have an exemption and once you take and add an item such as used automobiles and you break the exemption and these people are able then to use that as a lever to gett freight forwarder authority to move household goods and I assume there is some benefit there bringing that industry under regulation but we are not interested in transporting anything except the automobiles and some of the contents of the automobiles and I think again that the interests of the motor carriers is minimal in the freight forwarder proceeding, and I don't think they should be permitted to intervene.

Mr. Ewald: Perhaps I should mention also we are filing protests to the other freight forwarder applications in which they seek only to forward automobiles. This is not only one freight forwarder application which the National Automobile Transporters Association is involved in.

Exam. Sutherland: Well, I will allow the intervention and will permit National Automobile Transporters Association, Automobile Transport, Inc., Dealers Transit, Inc. and Kenosha Auto Transport Corporation to intervene.

Mr. Kiel?

Mr. Kiel: Mr. Examiner, at this point I would like to offer an amendment to the freight forwarder application. Mr. Shea and I have communicated and we have made known this information to the Commission, to assure protection of the interests of his clients we have agreed to a modification.

Exam. Sutherland: You mentioned Mr. Shea.

Mr. Kiel: Mr. Shea, this gentleman represents certain of the freight forwarders -- to modify the description. The description reads as you have read it in the record. We would amend that to add the word "used" before the last two words in the commodity description, which are "sporting equipment," so that the complete --

Exam. Sutherland: Just so I follow you, Mr. Kiel, you are talking about the commodity description, and it reads, "used passenger automobiles --"

Mr. Kiel: "with or without baggage, personal effects, and sporting equipment," and we propose to offer an amendment so that it will read, "used passenger automobiles, with or without baggage, person effects and used sporting equipment."

Exam. Sutherland: That is restrictive in nature, and it is narrowing the application; so the application will be so amended.

There is another point I believe here that was raised in the docket.Somebody raised the question about "air."

Mr. Kiel: Mr. Shea and I have discussed it. The application for freight forwarder authority prepared by the Commission sets forth all the different modes of underlying carriers. As I understand the Act the freight forwarders authorized by the Interstate Commerce Commission may only use carriers for underlying transportation who are regulated under parts I and II or III of the Act. We all know that the Commission does not regulate air transportation, so I don't think they can issue authority which can permit the use of underlying air carriers. That is the Civil Aeronautics Board and they as we also know have licensed a group of people called air forwarders as such.

Exam. Sutherland: It really should be eliminated.

Mr. Kiel: The Commission has no jurisdiction even though they have a notation in the form.

Exam. Sutherland: All right. Then the application should read "through the use of facilities of common carriers by railroad, express, or motor vehicle in the transportation of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States," and let "air" come out.

Mr. Kiel: It should. Yes.

Mr. Shea: It is really a problem in the way the form is printed up by the Commission, and I believe the form now says "air."

Exam. Sutherland: As amended the application, as I understand it, would read, "authority sought under Part IV of the Interstate Commerce Act as a freight forwarder in interstate or foreign commerce, through the use of facilities of common carriers by railroad, express, water, or motor vehicle in the transportation of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States.

The application will be so amended.

Mr. Shea: Based on that, Mr.Examiner, the freight forwarders, Acme Fast Freight, Inc., International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co. and Universal Carloading & Distributing Co., Inc. withdraw their protests to the application.

Exam. Sutherland: Mr. Shea, Acme Fast Freight --

Mr. Shea: That is all of the protestants whom I represent.

Exam. Sutherland: International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co. and Universal Carloading & Distributing Co., Inc., all of your protestants?

Mr. Shea: Yes. The protest was based on the two problems which we have just discussed, the commodity description and the question of air.

Exam. Sutherland: So all of your protests are withdrawn?

Mr. Shea; Yes.

Exam. Sutherland: All right.

Mr. Shea: May I be excused?

Exam. Sutherland: Yes.

Mr. Shea: Thank you.

Mr. Kiel: On Friday I received advice from the applicant that it had just received commitments from certain witnesses that they would be available at the hearing. I mailed this document to the Commission on Friday and rather than mail it to these gentlemen, many of whom were coming from out of town and probably would not have it, I advised the Commission I would distribute it here this morning. This is in accordance with the provisions of the Schaeffer decision indicating as soon as it is known to the applicant that additional witnesses will be available.

Mr. Examiner, one further point, if I may, my client just advised me that onFriday after the papers had been sent to me were sent to the Commission he received advice and certification from two other witnesses who will testify. I can submit the certifications to you and give the parties the names of the witnesses who will be here probably Tuesday or Wednesday of this week or I can have copies of these prepared, but I will give the names now and submit copies later, whichever is convenient.

Exam. Sutherland: First of all, starting with the supporting shippers you had in the docket, you had Olin of New York, is that right, in the docket?

Mr. Kiel: I had in the docket a Mr. Vincent Liguori of Olin of New York, Incorporated.

Exam. Sutherland: Then you had the Northeast Corporation?

Mr. Kiel: Yes.

Exam. Sutherland: Then you had, one, two, three in there that had signatures?

Mr. Kiel: Individual persons with the company.

Exam. Sutherland: Thatwas William -

Mr. Kiel: William Sigmund, Isabel Goodman and Benjamin Bergman.

Exam. Sutherland: Now, with this letter of August 1st mailed to Neil Garson, the Secretary of the I.C.C., is that Muriel S. Toxkin?

Mr. Kiel: Muriel S.   Yes.

Exam. Sutherland: The next one is, Friedman, is that it?

Mr. Kiel: Yes. William B. Friedman.

Exam. Sutherland: And then Sydney?

Mr. Kiel: Bloomberg.

Exam. Sutherland: So that makes 8 witnesses right up to this point.

Mr. Kiel: No, Mr. Examiner. We submitted on January 13, 1969 a letter to the Commission to which was attached a notation to -- the city manager of Econocar, I can't read his signature. This was a letter.

Exam. Sutherland: This was a letter?

Mr. Kiel: A letter.

Exam. Sutherland: January 13th?

Mr. Kiel: My letter was dated the 13th, and the certification was dated December 23rd. That was submitted to

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the Commission. In addition to that --

Exam. Sutherland: I was just taking this up to the point where you handed me this letter of August 1st. Would that make with the 3 you have attached to this letter and what you have in the docket, then that would make 9?

Mr. Kiel: No. Not completely, Mr. Examiner.

Exam. Sutherland: There is more yet?

Mr. Kiel: Yes. On July 29th we submitted 7 additional certifications in support to the Commission and to all the parties as soon as we received the notice of the certifications.

Exam. Sutherland: Then that makes 16?

Mr. Kiel: Yes.

Exam. Sutherland: Then you indicated there is additional, Mr. Kiel?

Mr. Kiel: And now the two, I have 2 additional ones which will be a Mr. William Bailey of E. R. Squibb company and a Mr. Michael King. If the parties would like I will have copies of these made so you will have them tomorrow. If not, I will give them for the record now. On the usual form, they are similar to the ones you have had except they are signed by different people. No one indicates they want them.

Mr. Alfano: I have no objection to the reading of the names.

Mr. Kiel: I read them already.

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Mr. Alfano: You read the last?

Mr. Kiel: Yes, Mr. Bailey of Squibb and Mr. Michael King.

Mr. Hill: I am going to enter an objection to the presentation of any evidence in behalf of those parties whose names are on the certifications with the covering letter of July 29th and the covering letter of August 1st, and presumably these two additional certifications which I have not seen for the reason that the certifications of the supporters are not in compliance with the provisions of the Schaeffer case as set forth in that report and as published in the Federal Register notice to the public. Now, is this the proper time?

Exam. Sutherland: Go ahead.

Mr. Hill: Now, the Schaeffer case requires that the certifications of support filed with the Commission subsequent to the filing of the application shall include a statement by the person submitting the certification as to when that individual in behalf of himself or the company he represents first knew of the application and presumably decided to support it, and in looking at these certifications I find no such statement on any statement by the individuals. For all I know they may have known of the application since it was first published and may have just decided at the last minute to come in and that would not be in compliance with the Commission's requirements. Certainly bringing in a large number of witnesses at this late hour is contrary both to the rules of the Commission and it goes behind these rules as to why they have such rules.

Mr. Kiel: Mr. Examiner, the Commission has, through its Examiners, received in evidence all witnesses whose names were given in a letter of counsel in a similar proceeding involving similar authority heard in Miami this spring, the Examiner received witnesses who came in the day of the hearing on the basis that was the first time that the applicant had known about their availability. Each of our statements is properly signed and dated with the date that the support was made known to the applicant and my letters to the Commission indicated that they were supporting shippers who just made known their support to the applicant on the date shown, and I think that it is proper for them to be called in the motor carrier case. Of course there is no requirement of certification in the freight forwarder application, in any event, but I think that they clearly have met the requirements.

Exam. Sutherland: These people you are giving --

Mr. Kiel: Are going to testify in both cases.

Mr. Hill: The wording is very clear. It says the certification shall contain a statement by the witness as to the date on which he first made his support known to the applicant. The witness shall make such a statement on the certification and these certifications do not contain any such statement.

Mr. Kiel: Mr. Examiner, I have seen at least 50 cases where certifications were put in in the manner I have and even in a less informal manner merely by a letter of counsel indicating that witness, name such and such, of such and such a company, will testify at a proceeding, and therehas been no question ever of their acceptance.

All sorts of objections have been raised and in every instance they have been accepted.

Mr. Hill: If the Examiner please, thiswould certainly defeat the purpose of the rule. One of the purposes is to make known to the parties in a proceeding those witnesses who intend to support an application in order that they might check their own records and make any investigation they feel necessary to determine whether they served that shipper or had any relationship, any solicitation, or what have you.

To come in at the 11th hour and submit a whole slew of additional certifications with no indication of when those particular witnesses knew of the application certainly defeats one of the purposes of the rule, and regardless of what may happen in other cases Mr. Kiel participated in nevertheless the point is that the rule is here, we have it, and why shouldn't we abide by it?

Exam. Schaeffer case, as I understand it, it says if the number of supporting shippers should be increased subsequent to the filing of the application information regarding identity and location of each of the subsequently acquired supporting shippers should be transmitted promptly to the Commission and all parties to the proceeding.

It says to all parties to the proceeding. Did you, Mr. Kiel, when you sent in, I think you said January, your first letter, take up to Ju,y 29th, did you send notice to all parties?

Mr. Kiel: Yes. At all points in the proceeding whenever there were any parties to the proceeding they were served with copies of everything and they were served with covering letters which indicated that the certification had just become known to the applicant.

Exam. Sutherland: So then is it a fair statement then except for the gentleman representing Squibb and Mr. King they had notices of all the witnesses except those two prior to the hearing?

Mr. Kiel: Except also the three witnesses about which I mailed on Friday to the Commission as fast as I got them and I did not mail the information to the parties knowing many of them were from out of town and at that time papers would serve no use on their desk Monday morning when they were in New York here, and I thought it prudent to bring them in and

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serve them directly, which I did.

Exam. Sutherland: Then these three you handed up with the letter of August 1st, and the gentleman representing Squibb and King, it means five that they did not get prior notice prior to the hearing, is that right, today?

Mr. Kiel: That is correct except that as soon as we found out about the three whose statements were sent to the Commission on Friday we made that known to the Commission and prudentially brought the information along for the protestants in the motor carrier case.

Also, I had no information until this morning that late Friday the support was secured from the other two witnesses whose certifications I hand you.

The Commission does not say if you get witnesses at the last moment you may not call them, but I think the purpose of the Schaeffer case was to have some orderly notification and in every instance when there were parties to the proceedings, the certifications were filed with the Commission and were copied and copies were sent to each protestant, together with a transmittal letter indicating they were being submitted as soon as they became known.

Mr. Hill: Prior to the letter of July 29th apparently there were only 6 certifications of support for the motor carrier application. Now we added 7 more with that letter, and 3 more submitted today with a letter of August 1st, and

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then apparently 2 more, which means they actually came in within the last few days with twice as many certifications as we had filed with the application. It seems a little unusual that the applicant would wait until practically the day of the hearing to make known its support.

I still maintain that they have not complied with the rule indicating that the witness should state when he first knew of and agreed to support the application.

Mr. Ross: I would like to join in Mr. Hill's objection, and, secondly, I would like to point out none of these certification copies which were attached to Mr. Kiel's letter of July 29th and what has now been handed out as of August 1st in any way specify the location of the particular witnesses to give any indication with respect to that. I think that is an additional ground for rejection.

Mr. Kiel: There is no provision on the certification form supplied by the Commission and used and required to be used for an address, so to that extent that is perhaps my responsibility for not putting addresses there because there is no place for it.

Exam. Sutherland: Mr. Kiel, I think it would help the Commission in the future when you have these, why couldn't these men or women signing a name have it typed underneath and the address and so forth?

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Mr.Kiel: There is no reason except that there is no place on the form and it was not done, but we will do that in the future, Mr. Examiner. I think it would be a good thing for the form to be adapted to show the address.

Exam.Sutherland: I think it would, too.

Mr. Kiel: It would be helpful.

Exam. Sutherland: Because sometimes when you look at these certifications even when they represent a corporation they will just put the name of the corporation down and you don't know where the corporation is located or the company.

Mr. Hill: I would agree to that that the form should be amended. A lot of times you cannot read the names and signatures and you have no way of knowing who the person is and sometimes you can't read the name of the company.

Mr. Kiel: One signature I could not read and I printed the man's name under it.

Mr. Ross: Would you be willing to swear that is his signature?

Mr. Kiel: That is what I was advised, that is the man's signature. I could not read it.

Exam. Sutherland: Have I heard everything on the Schaeffer case?

(No response.)

Exam. Sutherland: This Schaeffer case has caused a lot of comments and problems and I have had it over and over. I have had a passenger case once where I think about 12 people were mentioned in the list and then we got to the hearing and some big carriers like Greyhound and other people protested, and they brought in a bus load of additional witnesses and in that case I did not think that the Schaeffer case applied to passenger cases.

Then you have some attorneys coming in and saying they were not aware of this Schaeffer case decision until the hearing developed and it has caused all kinds of difficulty, but it looks to me, Mr. Kiel, that as far as I can see you have tried to abide by this Schaeffer case ruling as closely as possible, so I will permit these witnesses to testify.

Mr. Kiel: Thank you.

Mr. Hill: May I inquire is the applicant to be allowed during the course of the hearing to continue to bring in witnesses even after the hearing commences?

Exam. Sutherland: I don't think so. I think once we begin the hearing that --

Mr. Kiel: May I comment on the record in view of Mr. Hill's inquiry that my client indicates there are two persons who indicated that they would support the application. However, they have not received a certificstion from the support and witnesses have been advised that unless they send us a certification they could not testify in the motor carrier proceeding; so if they do provide a certification those would be the only two we would submit.

In any event if the Examiner won't hear those witnesses in the motor carrier case we will present them as freight carrier witnesses only. There is no requirement for notification in freight forwarder applications.

Exam. Sutherland: I am inclined to think once the hearing starts, and sometimes hearings last two, three, four and five dahs, I don't think after hearings start we should have these certifications being presented, and I think they ought to be presented today if we are going to -- I think in all fairness to the other side they at least ought to know today who the witnesses are going to be.

Would you like a short recess at this time or are you ready to go forward?

Mr. Kiel: Perhaps it might be desirable to speak with certain attorneys. Perhaps they have an interest that can be satisfied without affecting the application.

Exam. Sutherland: We will have a short recess.

(Short recess.)

Exam. Sutherland: We will go back on the record. Are all the protestants present? I think there is one matter we should take up at this time. Is there any objection to going ahead on this on a consolidated record in this case?

(No response.)

Exam.Sutherland: There appears to be none, so we will go ahead on a consolidated record. Mr. Kiel?

Mr. Kiel: Before I call my witness I think I might distribute a copy of carrier's present operating authority and then explain what the purpose of the application of AAACon is and what is intended with respect to the freight forwarder application.

May I ask that certificate No. MC 125808 (Sub 1) of Aaacon Auto Transport, Inc. be marked for identification?

Exam. Sutherland: It will be marked Exhibit 1.

(Applicant's Exhibit No. 1, Counsel Kiel, was marked for identification.)

Mr. Kiel: With respect to Exhibit No. 1, Mr. Examiner, there is a restriction against transportation of traffic having a prior movement by rail.

Exam. Sutherland: Rail or water.

Mr. Kiel: Yes, but insofar as the rail situation is concerned the applicant has published in its tariff and presently holds out to provide a motor carrier transportation service under the authority using substituted rail service. It is our position that the restriction against transportation of shipments having a prior movement by rail does not apply when the carrier has handled an automobile in substituted service and at the end of the rail portion of the substituted service is then moved to its destination.

The Commission has decided that such an operation using Plan I piggy-back service was not a joint haul but rather a single line motor carrier service and the citation is the National Automobile Transpoeters Association case reported at 91 MCC 395, at page 410.

At the same time the Supreme Court of the United States in the American Truck Associations against 8 Sant Fe Railroad, which is reported at 1967 Federal Carrier cases 81916 indicated that the Court likened the use of rail substituted service to motor carriers who might put a truck on a ferry which then crosses the river and the ferry would be the carrying vehicle and the judges indicated in that decision that they could see no reason why it would be necessary for a motor carrier to transport over-the-road for the complete haul; so in effect what we are saying is we believe we have it. We also are asking in this proceeding for a determination of that.

Exam. Sutherland: Take one thing at a time, Mr. Kiel. If the Commission were to go along with the applicant and revise this restriction in any way how would it read after it was revised?

Mr. Kiel: I don't believe it would need to be revised. All I think that would be necessary would be to indicate that the theory of the decision in the National Automobile Transporters Association case involing Plan I operations was applicable to the situation here and with that nothing would need to be done really in that respect.

Exam. Sutherland: What I was getting at is if you were successful in the application here in the Sub 2 case would the Commission issue a certificate or would it revise this Sub 1 restriction, or just what are you seeking?

Mr. Kiel: It would make no difference, really. The second portion of the motor carrier application here is to insure that the operating authority in Exhibit 1 permits the handling of automobiles for the freight forwarder applicant.

In other words, it is proposed that AAACon would pick up automobiles using driveaway service and move them to the assembly point of the freight forwarder and the freight forwarder then ship them using underlying water, rail or motor, and at the end of the movement at the distribution point of the freight forwarder the services of AAACon would be used for the delivery using driveaway.

The operating authority of AAACon contains no restriction against handling freight forwarder traffic. However, there have been some persons who have argued that if the freight forwarder used a rail carrier for the underlying movement that the restriction in the AAACON certificate would be applicable. As far as I am concerned the prior movement that AAACON would be handling would be for the freight forwarder and the restriction presently in the certificate to that extent would not bar the service; so what I am saying in effect is that I believe we now have authority to do everything we are seeking in this proceeding both for the freight forwarder and to use the substituted service under Plan 1. I hope that the Commission agrees with me and in that instance all we ask for them is to say what our authority means, and we don't ask for another certificate.

However, if they disagree and feel that some modification must be made then we ask in the Sub 2 proceeding that they grant us the authority they deem necessary.

Exam. Sutherland: Mr. Kiel, as far as looking at the application you filed here today, that we are hearing today, and the commodity description in your Sub 1 certificate, that is the same as in this application, isn't it? You have used automobiles and, of course, in this application today we have with or without baggage.

Mr. Kiel: Yes.

Exam. Sutherland: That is not in your certificate.

Mr. Kiel: Yes. Yes, sir.

Exam. Sutherland: Yes. It is, too. It is.

Mr. Kiel: Yes. It was copied exactly. The commodity description is the same.

Mr. Alfano: No, it is not. You just amended under sporting.

Mr. Kiel: No. We amended just the freight forwarder application, but actually the purpose of that was to insure for the freight forwarder part. We were not going in the business as a freight forwarder of sporting goods, but rather this would be sporting goods which might be placed in the automobile and carried for the owner of the automobile with his baggage.

Exam. Sutherland: Then this description of your commodities is the same as the Sub 1?

Mr. Kiel: Yes, in the motor carrier application.

Exam. Sutherland: Then we have the same territory between points in the United States.

Mr. Kiel: Yes, except that we did not exclude Hawaii from the freight forwarder application.

Exam.Sutherland: So this application today includes Alaska and Hawaii, is that it?

Mr. Kiel: Yes.

Exam. Sutherland: And other than those two states being added --

Mr. Kiel: We have the applicant --AAACON has Alaska now. He has 49 states.

Exam. Sutherland: And including Alaska and excluding Hawaii, that is right; so under this application today that includes Hawaii?

Mr. Kiel: Yes. That is right.

Exam. Sutherland: And it is all secondary movements.

Mr. Kiel: Yes.

Mr. Hill: May I make an inquiry?

Exam. Sutherland: Yes.

Mr. Hill: In the event that this application that is being heard here today is granted the way it is now set forth is it the applicant's intention to ask for a cancellation of or to surrender its Sub 1 certificate?

Mr. Kiel: No. This is a different portion of the operation that applicant proposes to provide. Applicant provides a complete motor carrier driveaway service of used automobiles, using the highways in all respects. It is proposed to have Auto Trip USA act as a freight forwarder and have AAACON working for them doing assembly and distribution work. This could be a completely separate business and also with regard to the use of substituted service applicant would like to have the ability to be able to use that should circumstances warrant it.

Exam. Sutherland: You talk about substituted service. Just what do you mean?

Mr. Kiel: For example, if applicant had a shipper in Connecticut who desired to ship a car to say Yosemite National Park in California you could pick the car up and drive it from Connecticut to a rail junction in the New York area, which would be Little Ferry, New York, and then use a multi-level rail car, load this and other automobiles on the car and send them to San Francisco, for example, and then take them and deliver them by driveaway to the ultimate destination. The service would be the use of Plan I where it would be a single motor carrier billing and it would be covered by proper tariff provisions as required by the Commission, in these instances; and, in effect, what we would be doing for a portion of the operation on the highways we would be substituting the rail segment.

Exam. Sutherland: Mr. Kiel, then as I understand what you said, from Connecticut to New York for that substituted service you would not consider that as having prior movement by rail or water.

Mr. Kiel: Of course it would not have had a prior because we would be picking it up but at the terminus our position would have -- I have the notation of exactly the way the Commission said it. Perhaps that is the best way, and this is from page 410 of the decision at 91 MCC, the sentence begins as under TOFC Plan I service whereby a motor common carrier utilizes substituted rail service for motor service for the transportation of initial movements of automobiles there is no delivery to a connecting carrier and no interchange in the sense of a motor to motor interchange with a rail carrier and rather what is contemplated is the substitution of rail service for a portion of the service the motor carrier is already authorized to perform under its own existing initial authority.

That I think is better than I would be able to say it. That is the theory of substituted service as we conceive it and that is why we feel that the prior rail restrictions would not apply because this would be a motor carrier movement only, there would be no rail interchange, no rail theoretically involved in the transportation.

Exam. Sutherland: On the Connecticut movement you mentioned would applicant do the transportation, perform the transportation from Connecticut to New Jersey?

Mr. Kiel: Under the substituted arrangement, substituting service arrangement, applicant would do all the transportation, but would substitute for the road haul a portion of the trip a rail car. That would be what would be involved. However, basically the operation that we wish to provide is to assure a segment of the public a particular type of service which they would pay premium rates for, namely, a freight forwarder service and the shippers could then choose whether they want a freight forwarder service at a higher rate as a premium type service which they could secure from Auto Trip USA, which is a subsidiary of AAACON, or a highway service which would be performed at a lower cost to the customer, all of which will be explained in some detail on our presentation.

Exam. Sutherland: All right. Are we ready to go ahead now, Mr. Kiel?

Mr. Kiel: Yes. Mr. Zola.

Mr. Ross: Mr. Examiner, may I ask counsel a question first?

Exam. Sutherland: Yes.

Mr. Ross: With regard to your prior restriction against the movement of traffic on government bills of lading would the grant of this application have any influence on that?

Mr. Kiel: Yes. It would remove that restriction to the extent that operations would be performed for a freight forwarder. There is no restriction in the freight forwarder application for that type of service.

Mr. Ross: I was speaking of the Sub 2.

Mr. Kiel: Yes. Yes. Sub 2 is limited thereon to service having a prior or subsequent movement by a freight forwarder on a freight forwarder bill of lading, so that the freight forwarder application is not restricted against the movement on government bills of lading or any other bills of lading.

Mr. Ross: Also you would not be restricted to the utilization of this subsidiary freight forwarder, is that right?

Mr. Kiel: That is correct. We could do it for any other freight forwarder as well.

Mr. Hill: Along the same line isn't it correct that there is an alternate request for service in Sub 2 to either have a freight forwarder or itself to handle exrail traffic, and if we look at the part that deals only with the ex rail traffic and forget for the moment the forwarder restriction in the authority that would in effect remove the restrictions (2) and (3) in the present Sub 1 authority, and it would enable the applicant to handle ex rail traffic under Sub 2 if moved on government bills of lading and also to dealers, as I understand it.

Mr. Kiel: No. We are not asking for authority except prior and subsequent movement on freight forwarder billing for a freight forwarder. We are asking for authority to transport shipments which had a prior movement by rail for the reasons I explained, namely, to clarify the interpretation of the use of substituted service.

Mr. Hill: The application reads, if the Examiner please, "restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having a prior movement by rail."

Now, a shipment could have a prior movement by rail without regard to any intervening forwarder service and under this application it could be handled under those conditions regardless of whether or not it was on a government bill of lading or whether it went to an automobile dealer. It could be any traffic just so it had a prior movement by rail and met the other conditions in the commodity description.

Mr. Kiel: Mr. Examiner, I tried to explain, and one of the reasons I took the time is so that it would be clear and you would know our position. I know what it says, and I phrased it as best I could in the application. I have explained what we intend. It is on the record. You know if the Examiner sees fit to find we need that authority and he finds a different way of wording it to permit us to do what we have explained we would like to do -- that would satisfy us.

Mr. Hill: Would applicant have any objection to incorporating into the Sub 2 the additional restrictions that were in Sub 1 to carry this forward into its Sub 2 application? We are faced with this position.

Mr. Kiel: Will that eliminate your interest?

Mr.Hill: I am not saying it would entirely eliminate our interest, but certainly it would apparently make the application confined, it would make it comply to the proof more closely than it would as it now reads. My clients were involved in the Sub 1 in the effort to get certain restrictions that were obtained and removing our interest and now the applicant at least in the application itself, regardless of its theory of proof here, is eliminating certain restrictions we earlier obtained. That is at least a portion of our interest in this proceeding.

Mr. Kiel: I would be glad to speakwith Mr. Hill, and others, at the first recess to discuss this in further detail.

Exam. Sutherland: All right. Let's go ahead with the witness.

Mr. Kiel: Mr. Zola.

PAUL ALAN ZOLA

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) State your full name and residence address.

A Paul Alan Zola, 326 Sunset Boulevard, Wyckoff, New Jersey.

Q Are you an officer of AAACON and Auto Trip USA?

A Yes.

Q What office do you hold in those companies?

A In both companies I hold the offices of vice president and secretary.

Q Are you familiar with the business activities of those companies?

A I am, sir.

Q Have you caused to be prepared certain exhibits which indicate information concerning these companies which will be used in connection with these proceedings?

A I have, sir.

Mr. Kiel: Mr. Examiner, may I have all documents marked at this point and distribute them. We can distribute them as they are referred to.

Exam.Sutherland: Yes.

Mr. Kiel: The first document I ask to be marked is a list of officers, directors and stockholders of the two applicants.

Exam. Sutherland: It will be marked exhibit 2.

(Applicant's Exhibit No. 2,
Witness Zola, was marked
for identification.)

Mr. Kiel: May I ask also, Mr. Examiner, that a document entitled, List of offices and call stations of AAACON be marked for identification?

Exam.Sutherland: It will be marked Exhibit 3.

(Applicant's Exhibit No. 3,
Witness Zola, was marked
for identification.)

Mr. Kiel: May I ask that a traffic analysis for a 6-week period from June 1st to July 15, 1969 be marked for identification?

Exam. Sutherland: It will be marked Exhibit 4.

(Applicant's Exhibit No. 4,
Witness Zola, was marked
for identification.)

Mr. Kiel: May I ask that a financial statement of the applicant AAACON and its balance sheet as of at December 31, 1968 and statement of earnings for the year be marked for identification?

Exam. Sutherland: It will be marked Exhibit 5.

(Applicant's Exhibit No. 5,
Witness Zola, was marked
for identification.)

Mr. Kiel: May I ask that a document entitled, Auto Trip USA, Inc. underlying railroad freight charges be marked for identification?

Exam. Sutherland: It will be marked Exhibit 6.

(Applicant's Exhibit No. 6,
Witness Zola, was marked
for identification.)

Mr. Kiel: Finally I ask that a document, entitled balance sheet as at July 31, 1969, Auto Trip USA, be marked for identification.

Exam.Sutherland: It will be marked Exhibit 7.

(Applicant's Exhibit No. 7,
Witness Zola, was marked
for identification.)

Mr. Kiel: May I indicate also for the record the underlying documents from which these figures on Exhibit 6 --

The Witness: 4.

Mr. Kiel: 4 were prepared are here in the hearing room.

Exam. Sutherland: All right.

Mr. Kiel: That is just a question of adding up the documents if anybody is interested.

Mr. Ross: We are. I am.

Mr. Kiel: May I also request, as is customary in these cases, I don't want the clients to have access to the names and other information contained on the documents, so I would ask counsel to please respect our rights for privacy in that respect.

Exam. Sutherland: In other words, counsel will examine the underlying documents and you would present them to them with that understanding that counsel would look at the documents and not the people that they are representing; is that correct?

Mr. Kiel: Yes.

Q Mr. Zola, what is the location of the principal office of your company?

A 147 West 42nd Street, New York City.

Q Is that the location where you perform services for the company?

A Yes, sir.

Q Sir, does AAACON perform services pursuant to the certificate shown in Exhibit 1?

A Yes, sir, it does.

Q Do you hold out to perform services to and from all points in the authority?

A We do, sir.

Q In addition to yourself does applicant AAACON and applicant Auto Trip USA have other officers, directors and stockholders as shown on Exhibit 2?

A Yes.

Q Is the information in Exhibit 2 correct as set forth therein?

A Except for the misspelling of the word "secretary" next to my office it is, sir.

Q With respect to Auto Trip USA is the stock of that company as shown wholly owned by AAACON?

A It is, sir.

Q Does AAACON have offices located in various places as shown in Exhibit 3?

A It does, sir.

Q What would be the difference between an office and a call station?

A An office is a place of business actually manned by personnel agents of the company which actually performs the shipments for the company. A call station is ordinarily a telephone listing with an advertisement in the telephone book in a given city which is serviced by an answering service, who transmits messages to the nearest actually manned office.

Q Take Albany, New York as an example. What type of service could somebody secure at Albany if they called the telephone listing at Albany?

A In the event they wished to have an automobile moved under our authority and they made that fact known to our Albany telephone answering service the Albany service would then communicate with the closest AAACON office, in this case New York City, who would perform the movement.

Q Will you tell us whether or not it is usual or unusual that when business develops in an area with a call station that it becomes an office location?

A Quite usual. I will say that a number of the offices that we now operate were originally call stations.

Q Has the number of offices of your company AAACON changed in the recent years since you secured your initial operating authority?

A Yes, sir.

Q How is that. Has it increased or decreased?

A Increased.

Q Will you tell us, sir, does your company plan to hold the same number of offices or get more or less, or what are your plans now?

A We plan to increase the number of offices we presently have in operation.

Q Will the offices which are those of AAACON Auto Transport be available to Auto Trip USA?

A Yes, sir.

Q Would you explain in what respect and how that would be done?

A It will be done in the following manner: Auto Trip USA will Begin to advertise its service. I should say that the genesis of this scheme was the fact we had numerous inquiries concerning the possibility of rail and motor carrier freight forwarding movements, not couched in those terms, but simply did we have the authority to move by rail, or motor carrier, or water carrier. We at the time did not. We then decided as a matter of policy to create this application in order to serve the public need which was manifested with some regularity for this business.

The shape of our operation, as we conceive it, will be that the public will respond to advertisements either from AAACON Auto Transport, should they desire motor carrier transportation in the way we perform it now, or advertisements from Auto Trip USA in the event they wish to have the freight forwarder service that Auto Trip Would provide.

The office which was contacted with respect to any given shipment would then handle it depending upon the manner in which the shipper requested service. Should they require rail or motor carrier service of an overhead type or water service then Auto Trip USA would handle the deal. Should they require motor carrier service in the way that AAACON has predominantly given such service then AAACON would handle the deal.

Q In that respectwould the same people in the office handle the service and provide the arrangements, and so forth for both companies?

A Yes, sir, except to the limited extent that we needed additional personnel to handle what we feel will be a large volume of business.

Q So that the record is clear, you indicated the use of motorcarrier service by the freight forwarder as distinguished from what AAACON now provides in the way of motor carrier service.

A AAACON is a carrier.

Q And it provides driveaway service?

A Yes.

Q What motor carrier overhead service, or line haul service would Auto Trip make use of in addition to rail?

A Auto Trip would make use of the underlying carriers who presently hold authority to move vehicles by means of truck and who actually in fact do move vehicles by means of truck although not precisely for the market that we have in mind.

Q Is that what the Commission refers to as truckaway service?

A To the best of my knowledge, it is.

Q Sir, did you prepare Exhibit 4?

A Yes, sir, I did. I supervised -- in part supervised and in part personally prepared Exhibit 4.

Q Did you add up your list from and to the various states that AAACON had handled during the period involved and put the totals down for this exhibit?

A I did.

Q Are the documents which you had used to get the totals shown on Exhibit 4 here in the hearing room?

A Yes.

Q What does this exhibit reflect, in your opinion?

A Well, this exhibit reflects a great many things. Could you phrase your question a little more directly?

Q The total for the 6-week period indicates that AAACON handled in excess of 2,100 automobiles?

A That is correct, sir.

Q Is that more or less than the number of automobiles handled by the company the previous years?

A More, sir.

Q Has your business been growing?

A Yes, sir.

Q In connection with this exhibit my examination shows that there is at least a movement in this document from or to every state except Wyoming. Do you actually hold out and provide service within the entire scope of your authority?

A We do, sir.

Q If the Auto Trip USA authority were granted would the traffic that might be handled by that company be diverted from AAACON traffic? In other words, would it be traffic that AAACON would handle if there was no Auto Trip USA, or would it be something else or a combination?

A I think fairly speaking it would be a combination. I think that we have a demonstrable ability to draw additional traffic movements that are either not being made or being made under circumstances not entirely satisfactory to the shippers. Additionally I do believe, although probably it is not reflected in this breakdown, because of the time periods involved, that certain of the freight forwarder movements would be movements which otherwise would have been AAACON movements, common carrier movements.

Q Would you tell us whether the flow of traffic handled by your company from and to the states involved in Exhibit 4 fluctuate from time to time?

A Yes, it does.

Q Or periods of the year?

A Yes.

Q Can you give me an example of that?

A The original example is traffic going between New York and Florida. The traffic from New York to Florida traffic during the periods I would say about October 15th to January 15th is a great deal greater than those at any other time of the year. The converse situation is also true, that the traffic coming up from Florida to New York during the period approximately April 15th until July 1st is substantially greater than it is at any other time during the year.

Another example would be the general increase in traffic during the months during which corporate relocations are usually performed, which would be the spring of the year; likewise the fall of the year. These are peak periods of time.

I think this is reflected also in the movers of household goods business in which you have more relocations, which means more movements of household goods, more movement of automobiles corresponding to this household goods movement.

Q Under authority Exhibit 1 indicates you are entitled to transport automobiles in driveaway service?

A Yes.

Q Will you explain how you do that?

A What we do we are contacted by customers who desire to have their cars moved from place to place. We are also contacted from time to time by drivers. These are casual travelers who wish to go from one location to another, but haven't the means of transportation to do so. Now, the class of people that provide the casual traverls will range anywhere from members of police departments in various cities that we have made known the fact that we have these cars available to college students, to professional waiters, and people of that ilk, who move with the season from place to place, and husband and wife who are going on vacation, to foreign tourists, and so forth. It covers a very wide range of individuals. These people are then screened by our officers with respect to, number 1, their fitness to make the trip. We medically examine them. We photograph them. We fingerprint them and we subject them to a reference check, which in my own opinion, which is definitely self-serving, is the most rigorous sort of a reference check that anyone could possibly be experienced to for a trip of this kind.

We have had, I think, excellent success in the movement of these cars by means of these drivers, minimal accidents and minimal losses of vehicles.

This, I think, in general describes the method by which we move a car.

Q Now, would you explain how a person who wants their car shipped by the driveaway method would contact you and how you would arrange for the movement of the car by these drivers that you have explained?

A Ordinarily we are contacted by a car owner because of an advertisement and I will say extensive advertisements, which we carry in the yellow pages, as well as advertisements which we carry in local newspapers in all the cities in which we are engaged in business, in which we have either a call station or an operating office.

These people ordinarily ask us the rate of the movement. We give it to them, and then wesend them out the forms as well as the descriptive brochure of our operation, which permits them to make the decision as to whether they want to move their car through our company. They then contact us telling us that they wish to make the move after having read our papers. We then arrange for the driver to pick up the car, or in the instance where we have not a driver to do it at this point we arrange for one of our own employees to pick up the car. It is then moved either by the driver who picks up the car or by a driver who we get to sign up for the car andmove it.

Q Do you ever have during these peak traffic periods conditions where drivers are not available as fast as the customers would like to have their cars moved?

A Yes, sir, and I must say as fast as we would like to move our customer's cars.

Q In that connection will the availability of the freight forwarder service serve any purpose?

A We hope so. We hope by offering an alternate to our customers, and we, I think, have been scrupulous about not promising precise delivery dates to customers, but by offering an alternate whereby we can offer a customer some assurance, given the vagaries of the rail service involved, be some assurance of a direct delivery date, a delivery date by which he knows his car will be in the area, we will be able to substantially tighten up the type of service we can give to a customer.

Q In that connection, sir, do you conform to the regulations of the Department of Transportation with respect to the securing of medical examinations for the drivers? I think you mentioned that the drivers were medically examined?

A Yes, sir.

Q Do you ask to see that they have an operative motor vehicle operator's license?

A Yes.

Q In the state where they reside?

A Yes, sir.

Q If the freight forwarder application is approved and the freight forwarder is operating how will the AAACON services be used by the freight forwarder?

A The AAACON service will be used basically as a pick up and delivery service. Let me see if I can give an example. The Kansas City rail yards are located in Kansas City, Kansas rather than Kansas City, Missouri. The bulk of the operation, however, based on past performance will be shipments originating in the State of Missouri. We will have to provide if we are to give what we consider good and proper service, we will have to provide a method by which somebody can go to the home of a car owner, a shipper, receive the car from them, move the car to the rail yard and supervise it until such time as it is loaded on to a rail car for movement. In this respect AAACON's authority will be used.

If I am not mistaken there is no problem with respect to this authority. We surely have at the present time the right to move a car to the railhead. At the point of delivery, let us say that this shipment, this hypothetical shipment we are talking about, was a shipment to Texas, let's say the Dallas-Fort Worth area, it would be necessary for somebody to move this vehicle from the railhead at Dallas to, for example, Fort Worth, where the party who is to receive it, the car, the consignee might be residing. We apprehend that AAACON will provide that service as well.

Q In effect would you use AAACON then whether the services were local within the community where the railhead is located or the assembly point of the freight forwarder as well as for more distant points maybe 100 miles away?

A Yes, we would.

Q With respect to that what type of people would AAACON use to handle the cars to and from the assembly and distribution points?

A On freight forwarder probably not casual drivers in the same way we have been using them in the over-all operation up to the present time. Probably professional drivers, that would be employees of AAACON.

Q Have you had any experience in having that type of personnel in your employ?

A We have.

Q Do you have any opinion whether you would be in position to provide that type of pick up and delivery service as AAACON for the freight forwarder with the necessary personnel?

A My opinion is we will be able without any question to provide that sort of service.

Q Would you please give us some more details concerning the advertising program of your company to secure customers for your service?

A Basically it breaks down into telephone advertising, newspaper advertising to the minimal degree which we do in a personal solicitation. Each of these areas of advertising has proved quite fruitful to us. We find in general we are the type of industry somewhat like the moving industry that does not need to go out and solicit members of the general public. Members of the general public -- they are, let me see if I can make a point. There are approximately 89,400,000 cars on the road in the United States. Members of the general public who have a need to have their cars moved, those who do want to have their cars moved have a tendency to contact us rather than have us contact them. This is done basically through the telephone advertising and newspaper advertising in much the same way when I moved recently from New York to New Jersey I looked in the telephone book to find out who was available to do my household goods moving.

The personal solicitation we do, on the other hand, is to inform corporations, basically commercial and financial corporations, that we have our service available and that they may use it at the same rate we offer to the public or at reduced rates to the extent that such multiple tender is set forth in our tariff.

Q In that respect you provide service subject to a tariff filed with the Interstate Commerce Commission?

A We do.

Q Would you tell us do you propose to have similar advertising or different advertising for the freight forwarders should it be authorized?

A Different advertising to the extent the situation is for a different method of service but similar advertising to the extent we will use the same media.

Q In that respect will you also file a tariff with the Commission establishing a single rate from the point that the automobile originates to its final destination including all intermediate costs that the freight forwarder may have?

A We will.

Q In that connection, sir, have you made any investigation with respect to the freight forwarder service that you propose to provide?

A We have, sir.

Q First, what type of underlying carrier service do you propose to use when you say you are going to use railroad? What kind of railroad cars do you plan to use?

A Well, we plan to use I would say in 99 percent of the cases KTTX tri-level cars, whibh contain a hydraulic mechanism for lowering the top of the car so that the car can pass through all railroad tunnels presently extant. We have had assurance that these cars are available and this is the type of vehicle we plan to use.

Q What is this type of car? Will you describe it for the record?

A Yes. This is basically a flatbed car with a superstructure imposed on it consisting of posts with hydraulic valves in them that raise and lower up and down and between the posts there is a structure consisting of two rails on three different levels. I am sorry. On two different levels. The flatbed is the first level and I believe there are rails on the flatbed, too, and two additional levels of rail on which the wheels of the car fit and are tied down.

Q Are these sometimes called tri-level cars?

A Yes.

Q Do these cars come in two levels?

A Yes, those are called bi-level cars.

Q Would you use those when necessary?

A To the extent necessary, but they are not as economical to use.

Q What number of automobiles, cars, may be loaded on a so-called tri-level?

A Depending on the length of the automobile, between 12 and 15, between 4 and 5 per level.

Q With respect to the bi-level car?

A It would be the same except one level would be gone, so you would get between 8 and 10.

Q Have you checked the use of such rail service by the rail forwarder should it be granted the authority? Have you checked with the railroad?

A Yes, we have.

Q This service?

A Yes,we have.

Q Would you tell us how would the automobiles that were being moved by the freight forwarder get on and off these multi-level rail cars?

A There are services doing business in almost every major railhead facility which provide such a service at a very nominal cost.

Q Would they do loading?

A They would load the cars.

Q Would they do unloading?

A They would unload the cars.

Q Do the cars need to be affixed or fastened to the railroad car?

A They do.

Q Who would do that?

A The loading service would operate to make the tie-down. Perhaps I should explan a tie-down.

Q Will you, just briefly?

A A tie-down is simply a mechanism by which the chassis of the car being the underside of the vehicle providing its basic frame is attached to the level on which the car sits. Up until about a year ago there was no such thing as a universal tie-down, which is what we require in this type of operation and which provides the type of a tie-down which will handle any kind of vehicle placed on the railroad car. It used to be that you had to put the same brand of car on for some engineering reason that I don't know in order to have them tied down so that they would be secure on the bed of the particular level. This was changed about a year ago.

Q Have you determined that there is sufficient rail yards equipped to handle automobiles on these multi-level cars once you start your operation?

A Yes.

Q Would they be the same yards used now for the handling of new automobiles that move from manufacturers?

A In some cases, yes, and in some cases, no. For example, the situation in Little Ferry is that.

Q This is in New Jersey?

A Little Ferry, New Jersey.

Q That is near New York City?

A Yes. This would be for the New York area. There used to be 3 large railroad yards available, two of which have been purchased by Ford and General Motors respectively so they are no longer available. However, the Little Ferry yard we are advised is quite available for this type movement.

Q Have you investigated the cost of the underlying rail service of the type you have been describing?

A We have, sir.

Q Will you tell me, sir, did you have this information in Exhibit 6 developed by a traffic consultant from the tariffs of the rail carriers on file with the Commission?

A We did, sir.

Q Were you advised that the rates are as set forth and that the items of tariff authority is as shown on the exhibit?

A We were, sir.

Q Do you know independently of this exhibit certain of the rates where you have had discussions with railroad personnel who have given you the same rate level?

A Yes.

Q Based upon your investigation will you tell us in your opinion whether or not this service by freight forwarder can be performed at a profit?

A Yes, it can be.

Q Will the charge -- how will the charge to be assessed by the freight forwarder compare with that which is presently assessed by the motor carrier?

A It will be higher.

Q And based upon your information do you know whether or not the public is prepared to assume payment for this type of service?

A Yes.

Mr. Ross: Objection, Mr. Examiner.

Exam. Sutherland: Read the question.

(The record was read by the reporter, as follows:

"Question: And based upon your information do you know whether or not the public is prepared to assume payment for this type of service?")

Exam. Sutherland: You can answer yes or no. I will overrule the objection.

A Yes, I know.

Q Will you tell us what information you have and how you got it?

A The information we have was gleaned from conversations with prospective shippers, individuals as well as people involved in shipments by corporations, which would be multiple shipments. It basically is what I know from a long, long history of conversations with these folk about precisely what we can and can't do.

Exam. Sutherland: On this Exhibit 6 how many automobiles does that cover?

The Witness: Well, for example, each of these is a tri-level car and would cover 12 to 15 automobiles, so to get the basic price per unit on the tri-level itself -- there are other costs -- you would simply divide by 12 or 15 or some median number to get a basic price per unit. The breakdown has to go finer than that, however, with respect to charges. Shall I go into that?

Exam. Sutherland: Go ahead.

The Witness: Basically a railroad car, the type of railroad car we are going to use is 89 feet 4 inches long, which my calculations tell me adds up to 1,072 inches. Between each of the automobiles tied down there has to be a 4 inch space, which gives us useable space of approximately 1,056 inches. We can get 5 cars on a level. In the event that the cars are no longer than 211 inches. If they are longer than that then we have to put 4 cars on a level. However, we are very often able to work out an economy by putting 168 inch Volkswagen along with a 224 inch Cadillac which will enable us in some instances to work with 5 cars assuming we combine those with other suitable vehicles. We can't put 4 Cadillacs and 1 Volkswagen on. However, we can take a

Chevrolet, which is approximately 215, I think, in length, a normal Chevrolet, and put one of those on and put a Volkswagen on, and a Pontiac on, and so forth and so on. I will say that the loaders are quite expert in deciding which level should hold which car to give us the maximum utilization of equipment. In addition to that you have to figure in the cost of loading and unloading, which are, for purposes of discussion, I suppose about $5. They are a little less, but I think $5 is probably what you will end up figuring per vehicle. You have to figure in cost of insurance on each vehicle which we will have to carry as a freight forwarder and then certain overhead and administrative expenses.

Q What about the pick up and delivery?

A Pick up and delivery I would figure separately. In other words, it would be done by another carrier. What I have talked about is simply the breakdown of the actual rail transportation. The pick up and delivery would probably be the same rate [illegible] we have in our present tariff for pick up and delivery for AAACON.

Q However, the customer who used the freight forwarder service would get one charge without being concerned whether you got 14 automobiles on a rail car or 16?

A That is correct. Let me amend that. This is a question of experience in tariff structure and quite frankly marketing.

We may end up making different charges for different sized automobiles, depending on the break point whether it is a 211 inch one or over, and I would say probably half the vehicles shipped are over and half are under, so my own -- I dislike to charge John for what I do for Peter.

Q In that connection, sir, you indicated that rail cars of the type you have been describing are available?

A That is correct.

Q How did you get that information?

A By contacting the railroads.

Q In that connection have you given any thought to the securing of such cars for the freight forwarder operation should they become important in the operation?

A Yes, sir.

Mr. Davis: I did not want to interrupt, but I move that last answer be stricken for the reason it is based on hearsay, whether or not these tri-level cars.

Mr. Kiel: You are not objecting to the question now pending but the one before that?

Mr. Davis: I object to that for the simple reason I did not catch it all and I did not get the answer.

Exam. Sutherland: Let's get the record straight. Read the last question.

Mr. Kiel: I will withdraw the last question and restate it.

Exam. Sutherland: The previous question he objected to.

You are withdrawing the last question?

Mr. Kiel: Yes, and I will restate it.

Exam. Sutherland: Would you read the one previous to that?

(The record was read by the reporter, as follows:

"Question: How did you get that information?")

Exam. Sutherland: Which question do you object to?

Mr. Davis: Both of them, but the second one merely explains where he got the information and that merely grounds my objection because it is obviously hearsay. Everybody knows there is an acute shortage of railroad cars, Mr. Examiner, and to come in here with vague and general evidence on are they available any time and in any number is highly improper and if he wants to go into some study he's made or survey he's taken I submit he should be qualified.

Mr. Kiel: Mr. Examiner, the witness initially answered this question that he was going to use rail cars and that they are available about a half hour ago in his testimony and if Mr. Davis could tell me how you could find out whether railroad cars are available except by asking the railroad I would like to know. There is no other way you can find out.

Exam. Sutherland: I will leave it in the record and Mr. Davis can go into that on cross-examination.

Q In that connection will you indicate whether or not you have made any investigation with regard to having the freight forwarder secure its own rail transport cars?

A We have, sir.

Q Will you tell us about that?

A We contacted one of the large manufacturers of rail cars, which is Budd Corporation, and tried to determine, first of all, is there any way, and you can understand why we asked this first, is there any way we could get a longer rail car to fit a couple more automobiles on and they said no because the engineering involved in such a car would make it impossible to move over the particular track we would have available to us, and, secondly, how much it cost and they gave us a price as to a kind of ball park figure as to what one of these cars would cost so that we might compute in the actual physical equipment, obtain a reduced rate on the movement of the car and assure ourselves of the availability at any time of rail cars as, when and if needed.

Q Sir, in that connection did you make an investigation with regard to transit time for moving a loaded rail car with automobiles?

A We did, sir.

Q How did you make that investigation? Where did you get your information from?

A From the railroads involved.

Q Generally what information were you given?

MR. Ross: I object, Mr. Examiner. Double and triple hearsay.

Mr. Davis: Not only that, but we are going into transit time now for which the Commission always requires some underlying documents on. If he wants to show what rail service is from New York to Florida and he is without a survey and looking at the railroad records, that is what should be here and not this witness' oral testimony.

Mr. Kiel: The witness is not going to testify as to what the actual rail service is. He is going to testify as to what holding out was made to him by representatives of rail carriers which I think is perfectly proper.

Mr. Ross: In that event I submit it is completely immaterial and irrelevant.

Exam. Sutherland: Every time we get into transit time we have difficulties because some people figure transit time different than other people. Sometimes they will include Sundays, holidays, Saturdays, and when we get into actual transit time we have difficulty to contend with.

We have had mention of railroads in this testimony so far and we don't even know who the railroads are that have been contacted.

Mr. Kiel: Let me withdraw the question then.

Q Mr. Zola, will you tell us the names of some of the railroads you have contacted in connection with freight forwarder service?

A Penn Central Railroad, C & O Railroad, Seaboard Coast Line Railroad, Santa Fe Railroad.

There were numerous others that I just -- I think B & O we contacted.

Q Did you discuss with them the transit time they might offer? Answer yes or no.

A Yes.

Q Did you form an opinion as to the time that it would take Auto Trip to move a car from one place to another based on the distance involved?

A Yes.

Mr. Ross: Objection again, no matter what the answer is. It has to be immaterial and irrelevant to the proceeding because it is not in any way meaningful to know what some railroad held itself out to this particular witness.

Mr. Kiel: The question I asked was has he formed an opinion based on information given to him and he answered, yes. There is no question pending.

Mr. Ross: If that is not a question --

Mr. Davis: Yes, there was a question pending and it was based strictly on distance itself and mere distance alone does not determine transit time by railroad or in any other way. That was the question.

Mr. Kiel: The question was asked and answered, and after it was answered, it was a yes or no, did he form an opinion, and the witness answered, yes. Perhaps they are anticipating the next question.

Exam. Sutherland: Mr. Kiel, this is between points in the United States. This is sort of general testimony and when we get into transit time it seems we should be specific as to what point we are talking about.

Mr. Kiel: Then may I just ask a question? I will keep that in mind in phrasing the question.

Q Will you tell us, Mr. Zola, giving us particular reference to certain points between which you expect that you would have freight forwarder traffic moved by rail cars what you anticipate will be the time in transit between those points?

Mr. Ross: Objection. First of all, the question is phrased in such a way that we don't know what objective he is trying to ask the question but allowing the witness to pick out the point. First of all, we should pick the point so that we can determine what if any basis this witness has for his answer, and, second, after the question is asked and before it is answered we should be allowed to take the witness on voir dire.

Mr. Kiel: I would be agreeable to have the witness tell us before he starts answering this the points he will use in his response, which is what the Examiner suggested as making the information more definite and certain as to a particular movement, and insofar as the other objection is concerned that is proper cross-examination and I think counsel will have every opportunity to cross-examine.

Exam. Sutherland: I will overrule the objection. You can answer the last question.

The Witness: I am going to answer it in my own circuitous way.

Mr. Ross: I will object in advance

Q First give the points of reference you are going to use.

A The one we were acutely concerned with to operate is New York to Miami and that is the one we did an awful lot of work on particularly, but I think I should say this in answering it so that my answer is clarified before I give it that I do not hold myself out to be an expert on traffic times. I hold myself out only to be able to repeat what was said to me by the agent of the railroad who I contacted.

Mr. Ross: Based upon the witness' statement just made I would object to any testimony as to transit times between any points.

Mr. Ewald: I would join in that.

Mr. Alfano: I would like to inquire whether there will be a witness here from the railroad and if not I also object to any of this testimony on the basis that this information can only be obtained from the railroad representatives.

Mr. Kiel: Mr. Examiner, the witness is in the middle of answering a question. I think the witness must be permitted to continue. The question was objected to when it was asked. You overruled the objection. The witness is in the middle of an answer and I submit he should be permitted to testify. The answer can always be subject to a motion to strike. We don't interrupt you when you are having something to say and I don't think the witness should be interrupted either.

Mr. Ross: He was not interrupted. It is a new question and there were objections before he answered.

Exam. Sutherland: I want to ask Mr. Zola this. Is it my understanding from your testimony so far the only study you made was on the movement from New York to Miami; is that right?

The Witness: No, sir. That is not correct. I said it was on the question of traffic time --

Exam. Sutherland: That is what we are talking about.

The Witness: Strictly on traffic time, the study I made was specifically answered for me by the railroad with respect to New York to Miami and other information was given to me of a vague and general nature with respect to other points in the United States.

Exam. Sutherland: But on the movement from New York to Miami what railroad did you contact?

The Witness: Seaboard and Penn Central and also C & O.

Exam. Sutherland: Would they be the only two railroads involved?

The Witness: C & O also. Penn Central would not be involved. Seaboard would -- I am sorry. ~~Penn Central~~

tracks would be used. Seaboard would be the carrier which handles the entire movement as far as we were concerned. Our contract would be with Seaboard. The obtaining of the car would be from Seaboard. Seaboard is the only people we would go to, to the best of my knowledge and understanding. What deal Seaboard makes is up to them.

Exam. Sutherland: Is it true then, Mr. Kiel, that Seaboard is the only railroad where specifically transit time has been obtained?

Mr. Kiel: The witness will know best as far as that, and as a practical matter, for the record, a movement from the New York area to Miami, Florida would require, the first railroad involved would be the Penn Central, and then the short line in Virginia called the RF&P Railroad, and then the Seaboard Coast Line to destination. The witness can give best the information he has.

Exam.Sutherland: But he's indicated Seaboard would handle it all the way through.

The Witness: I indicated that when I spoke to Seaboard I said, "Do I have to contact any other railroads about this?" He said, "No, just us. We will do the whole deal for you." What instrumentalities they use we have no interest in.

Mr. Davis: That is our problem. We are having one railroad here stated in general and vague terms, as the witness admitted, as to what the transit times are, when two other railroads are involved, at least two. Transit time has always been required by the Commission to be proved by documents and to let this gentleman come in and testify what somebody told him is improper. He can testify about some things perhaps but certainly not transit time.

Mr. Ross: To enlarge upon that slightly, if we had a person here who told Mr. Zola the information he states was related to him that person also would be incompetent to testify without substantiating documents. Here we first of all do not have the person who allegedly knows because this witness states himself he does not know. All he can do is repeat what was told him and then we have nothing whatever to cross-examine upon but yet we have this material.

Exam. Sutherland: What about that, Mr. Kiel?

Mr. Kiel: Mr. Examiner, we are not going to attempt to establish transit time. What I am interested in is the holding out, the holding out of service. What this man is relating and relying on as a freight forwarder from the railroads and what the railroads have told him they will do for him. We are not saying this will be what the railroads will actually do.

Exam. Sutherland: In other words, you are not saying this is what the railroads are going to perform.

Mr. Kiel: No. We will say this is what our understanding is as a customer of what their holding out will be.

Mr. Ross: But then he wants to go out and say based on this we will hold certain information out to our customers and it can only be performed if the first information is accurate and we don't have any basis to challenge that. I don't think it is fair.

Mr. Kiel: We are not concerned with something else. It had not occurred to me to make this representation to the Commission. We are only dealing with an understanding of a holding out by a freight forwarder from a railroad. That is all. We are not saying the railroad performs service on time, that all the trains run the same number of hours between the same points, and we are not saying this, and we have no way of establishing time. We are merely attempting to establish holding out of service.

Mr. Davis: It would seem to me to be a basic ingredient of this case since he as a freight forwarder is going to rely on rail service that it is almost necessary that rail representatives come in here and testify what they are willing to do for this forwarder.

Mr. Kiel: Mr. Examiner, there is no such requirement, and I don't know of any freight forwarder application that was ever supported by a railroad.

Exam. Sutherland: In other words, the testimony is not presented to show actual transit time that a railroad will perform on any particular movement but that the best that we could consider it in this record would be that it would be testimony from his investigation with the Seaboard of what would be held out from New York City to Miami; is that it?

Mr. Kiel: That is all. That is all.

Exam. Sutherland: And then we don't go into any other point because he's indicated that is the only point --

Mr. Kiel: That he has definite information.

Exam. Sutherland: I will overrule the objection with that understanding.

A Seven days.

Q Your freight forwarder application also indicates that the freight forwarder anticipates using underlying motor carrier line haul service?

A That is correct.

Q And you have indicated truckaway service?

A Yes.

Q Have you made any investigation to determine the feasibility as far as your company is concerned of using a truckaway service as the underlying long haul operation?

A Yes, sir, I have and this is the shape that investigation took. I called every licensed carrier listed in the New York telephone directory in order to determine what the cost would be to move a single automobile by overhead carrier between various points in the United States and none of them would agree to handle a single vehicle because of the fact that they said they moved only truck load lots and anything under a truck load they would have to charge me for the entire truck. This gave us the thought that we were in the position to consolidate, bringing to one point a number of vehicles which would then be tendered to the shipper for movement and we would be able to take advantage of a truck load rate and do a proper job.

Exam. Sutherland: Did you mean to say "tendered to the shipper"?

The Witness: I mean to say tender to the carrier. Thank you. I am sorry.

Q What do you propose with regard to the freight forwarder using underlying water carriers regulated by the Commission?

A Well, what we propose is to keep looking for a water carrier that can do a job for us. We initially contacted Sealand and Sealand told us if we could get 600 cars together they could make us a nice deal if we were going to one place and that did not seem to be quite what we had in mind, so we are presently looking for somebody that might be involved with barging that could handle 20 - 30 vehicles. We have not found one as yet.

Q With respect to the service to be offered by the freight forwarder would that service include pick up and delivery if the customer wants it, or permit the customers to bring their cars to the rail yard or assembly point you will set up for the freight forwarder to use?

A Yes. It is the customer's option.

Q Does AAACON maintain books and records of account as required by the Interstate Commerce Commission?

A It does, sir.

Q Have you prepared from those books and records or had prepared from those books and records of AAACON a balance sheet statement and profit and loss statement which is Exhibit No. 5?

A I did, sir.

Q To the best of your knowledge is the information contained in that exhibit true and correct?

A It is, sir.

Q In addition does Exhibit 7 represent the financial condition of Auto Trip USA at this date?

A Yes, sir.

Q As a wholly owned subsidiary of AAACON would sufficient funds be made available from AAACON to Auto Trip USA when and as they might be required in the conduct of its business?

A They would,sir.

Q Based upon your information concerning the freight forwarder application will you tell us whether or not the company feels it is in position to initiate this type of service?

A It is, sir.

Q Will you tell us whether or not you believe this operation can be performed at a profit?

A We do, sir.

Mr. Kiel: I think that is all I have. The witness is available.

Exam. Sutherland: Gentlemen, I notice it is almost 10 minutes after 12:00. Would you like to go ahead with cross-examination or have a break now or recess for lunch?

Mr. Hill: I prefer a break now.

Exam. Sutherland: I think we will recess and get back here at 1:15. Before everyone goes to lunch, Mr. Kiel, could you give us all an idea what witnesses you intend to call the rest of the day?

Mr. Kiel: I have tentatively asked to have two shipper witnesses available for this afternoon and I would hope that we would be finished with Mr. Zola's cross-examination in time so that they could be called. If not I would ask to have the cross-examination temporarily interrupted to call the witnesses and then recall Mr. Zola. I have scheduled some six or seven witnesses for tomorrow, and the balance for Wednesday, Wednesday morning. If we run a little faster then I expect most of the witnesses are from this area so we will try to ask them to come in if we see we are moving along and can call them, but that is the schedule I have worked up in my mind.

Exam. Sutherland: Then there is a possibility you might finish your case by noon on Wednesday?

Mr. Kiel: Yes. Yes. I think so.

Exam. Sutherland: All right, gentlemen. We will recess until 1:15.

(Whereupon, at 12:10 o'clock p.m., a recess was taken until 1:15 o'clock p.m. of the same day.)

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AFTERNOON SESSION 1:15 p.m.

Exam. Sutherland: Back on the record.

Mr. Alfano: Mr. Examiner, in behalf of Dependable Car Travel Service, Inc., protestant, I have talked to counsel for the application and he is agreeable to the admission of two documents in evidence, and with the understanding that the protestant will not withdraw its protest but will not cross-examine any of the witnesses at this hearing, and I will also ask to be excused from the hearing after the admission of these two documents.

Exam. Sutherland: All right.

Mr. Alfano: The first document I offer in evidence is a 4-page document entitled, MC 125978 (Sub No. 4) and (Sub No.5), showing the authority held by protestant Dependable Car Travel Service, Inc.

Exam. Sutherland: It will be marked Exhibit 8.

(Protestant's Exhibit No. 8,
Counsel Alfano, was marked
for identification.)

Mr. Alfano: The next document consists of 2 pages, and is a statement concerning two pending applications of protestant Dependable Car Travel Service, Inc. and its wholly owned subsidiary Dependable Auto Shippers, Inc., which embraces some of the authority sought in both proceedings.

Exam. Sutherland: All right. It will be marked Exhibit No. 9.

(Protestant's Exhibit No. 9, Counsel Alfano, was marked for identification.)

Mr. Alfano: And with the admission of Exhibits 8 and 9, Mr. Examiner, I respectfully request permission to leave the hearing room.

Exam. Sutherland: Mr. Kiel, there is no objection?

Mr. Kiel: There is no objection.

Exam. Sutherland: Exhibits 8 and 9 are received in evidence.

(Protestant's Exhibits Nos. 8 and 9, Counsel Alfano, were received in evidence.)

Exam. Sutherland: And you may be excused.

Off the record.

(Discussion off the record.)

Exam. Sutherland: On the record.The hearing will come to order. Mr. Hill, are you read to cross-examine?

Mr. Hill: Yes.

PAUL ALAN ZOLA

resumed his testimony as follows:

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Zola, first I would like to ask you some questions with regard to the motor carrier application of AAACON Auto Transport that is being heard today. Looking at Exhibit 1, which is a copy of your present authority, on sheet number 2, there are certain restrictions whereby the authority that you were granted in Sub 1 is restricted against the transportation of any traffic (1) having a prior movement by rail or water, (2) moving on government bills of lading, or (3) moving to automobile dealers. I take it in conducting your operations under Sub 1 that you have refrained from handling any traffic so restricted; is that correct, sir?

A Yes.

Q Is it not true that under the application that you have on file and you are prosecuting in this proceeding today in effect your company would be eliminating the restrictions contained in your Sub 1 certificate?

A I am not really competent to discuss that as a matter of law, that is really for you and counsel to decide.

Q Let's examine the authority you seek here in this application presently.

Mr. Kiel: I think this will be argumentative. The record will speak for itself.

Exam. Sutherland: Let him go ahead.

Mr. Hill: I have not finished the question.

Exam. Sutherland: Let him go ahead.

Q Your company here seeks authority for used passenger automobiles with certain other identification in secondary movements between points in the United States restricted to shipments have an immediately prior or subsequent movement by freight forwarder on a freight forwarder's bill of lading or to shipments having a prior movement by rail. Now, in the event that the authority should be granted and your company should receive a certificate worded just in that way if your company were tendered traffic which had prior movement by rail which involved used passenger automobiles which had moved on government bills of lading would your company accept such traffic?

A Subject to correction by counsel as to the meaning of the language, I would say, yes.

Q In the event you should have been granted this certificate as a result of this proceeding in the same language I just recited and you were tendered traffic which had a prior movement by rail that was moving to automobile dealers would you handle that particular traffic?

A With the same qualification as my last answer, I would say, yes.

Q There would not be any reason why you could not handle it, would there?

A Unless counsel comes up with a reason.

Q There is nothing you know of right now that you could not?

A I am really in this case not competent to say exactly what this means. I will leave that to counsel.

Q As an officer of the company and one who might have to judge whether traffic tendered to you could be handled -

wouldn't you say based on the authority you seek here today that you could handle such traffic?

A With the same restriction I gave in my previous answer, if counsel tells me I am wrong -- I would say yes, but if counsel tells me I am wrong in that reading of the certificate than the answer is, no. There is nothing obscure or unclear about that.

Q But you know of no reason why you could not at this time?

A I know of no reason.

Q And in effect by asking specifically to handle traffic which has had a prior movement by rail you are thereby specifically eliminating a portion of the restriction number 1 in Sub 1; isn't that true?

A If I understand your question correctly, what you are saying is our application asks for permission to move traffic having a prior movement by rail and if it is granted will it take away the restriction of not being able to move something having a prior movement by rail -- yes, I would say that is true.

Q Your company then would handle any traffic which had a prior movement by rail just so long as it was used passenger automobiles and you handle it in a driveaway service in a secondary movement; isn't that correct?

A Better start that again.

Mr. Hill: Strike that. Let me ask you this question.

Q In the event that there was traffic tendered to you that had moved by rail, let's say cars of a leasing company, a car leasing company, that moved by rail and got to a destination on rail, if that traffic were tendered to you in a subsequent movement in a driveaway service your company could handle that under this authority you are seeking here today, could you not?

A I assume yes.

Q Would you handle it if it were tendered to you?

A Yes, sir.

Q You can't handle that today, can you?

A If it has an immediately prior movement, no, sir.

Q Would you not agree with me that the authority you seek here in this proceeding would enable you to handle considerable additional traffic that you are not authorized to handle today under your present certificate?

A That is our object, I certainly agree with you if we get the operating authority we would be able to handle additional traffic.

Q Would you solicit and hold yourself out to handle such traffic?

A Yes, sir.

Q As I understand you plan to increase the number of offices that your company will maintain in the conduct of its operations. Are you prepared to recite any specific new-offices that you are about to open?

A No, sir.

Q Are the representatives of your company at the various offices shown in Exhibit 3 salaried employees or agents who are compensated by commission according to the number of cars that are obtained through that office for transportation by your company?

A In all cases our compensation has a relation to business. However, in some instances it is couched as salary and in some instances it is couched as commission. It is just a -- in all cases our compensation has a direct relationship to the amount of business done,if that makes it clear.

Q Does your company at the present time have any professional drivers assigned to the offices shown on Exhibit 3?

A Our company has drivers who drive for us as a regular thing for compensation. Now, I don't know whether professional drivers is a word of art or not, but that is what we have. We have people that are regular employees who drive cars as when and if we want them to. They are headquartered at the various offices and report into the various offices. They are not casual drivers as we use in the bulk of our operation.

Q Have you had such drivers assigned to all the offices shown in Exhibit 3?

A I would say if not, then the very vast majority. If there are one or two in which we have a one man operation and the man himself wishes to do such driving as is necessary then the answer would be, no, but except to the extent that he would come under the rubric of a professional driver -- I would say, yes. Let's make the answer, yes.

Q Are these drivers full time employees of AAACON Auto Transport, Inc.?

A Some are and some are not. Some are part time.

Q some of them perform no services other than driving for your company, is that correct?

A That is correct.

Q Others are drivers that you would keep on a so-called roster that you could call when traffic is available but they may perform or for other jobs or tasks that they perform, too; is that right?

A That is correct.

Q Looking at Exhibit 3, if I asked you, for example, how many full time drivers you have in Norfolk, Virginia could you tell me that, sir?

A Without being certain I'd say three, but I could not be certain of it. I'd have to simply go and check. I'd say three.

Q That are full time and do not have any other employment with any than with your company; is that right?

A To the best of my knowledge, yes, sir. It may be four. It may be two, but my reaction would be three.

Q With reference to Exhibit 4 for identification, which is an analysis of certain traffic handled during a recent period of time --

A Yes, sir.

Q Was any rail service utilized by your company in substitution for your motor carrier service on these shipments?

A No, sir.

Q Has your company ever in the past handled any traffic where you substituted rail for motor service?

A No, sir.

Q You testified, I believe, on direct examination that it is your opinion that at the present time you can substitute rail for motor service for a portion of the movement; is that correct, sir?

A Yes, sir.

Q But you have never chosen to do so?

A No, sir.

Q Is it your understanding that you can substitute a piggy-back service for part of your motor service?

A Would you define piggy-back service?

Q Well, service where cars would be placed on equipment and in turn on a flat car of a railroad, trailer or flat car. Maybe I should say it that way.

Mr. Kiel: If your Honor please, we are not talking about -- the witness' testimony did not relate to putting automobiles on trailers and then the trailers on the rail cars. The witness discussed only of multi-level rail cars where the automobiles were driven on and off the rail cars.

Mr. Hill: I am trying to find out whether it is limited to that.

Q Is it your understanding when you talked about substituting rail for motor that reference was being made only to a service where the automobiles were placed on bi or tri-level cars?

A When I discussed with you the question of rail movements on the freight forwarder aspect of the application that is correct. When I discussed the idea of substitution of service that is correct. For this reason, we have no authority to truck vehicles, and, therefore, the intervention of a carrier which was then placed on the rail car would be ludicrous in the extreme when we could not move it by carrier anyway. It would be a complete waste. I will say, by the way, that you raise an interesting possibility in the event that this application is approved with respect to the substitution of service between truckaway and rail.

Q Moving for a moment to the question of the forwarder application of Auto Trip USA my understanding is you would propose to utilize both rail and motor service for the line haul portion of the freight forwarder application; is that correct, sir?

A That is correct.

Q How do you plan to --

A And possibly boat.

Q -- divide the traffic for the rail and motor?

A This would be up to the general conditions, the marketing conditions at a given time. I think it would have a great deal to do with, number 1, the desire of a customer with respect to delivery time, and, number 2, the question of price and the difference, and also where say the number of vehicles tendered to make up a load.

Q Is it correct at this time that you do not know or have not made a decision as to how you would divide the traffic between rail and motor if you would do so?

A No, sir, that is not correct.

Q It is not correct?

A No.

Q Then you do have some plan?

A The plan is as I stated it. Should the car owner require a specific type of delivery which was more apt to be satisfied by a truck transportation we would attempt to contact the motor carrier. Should a car owner be satisfied with the rail transportation we would contact the rail carrier. What I attempted to show you was the principles of distinction on the basis of which we would make that decision. If you give me a case I can give you an answer, but other than that I can only give you the principles on which we decided which went where.

Q Is it possible that the traffic would all move by rail?

A Would all move by rail?

Q Yes.

A I doubt it. I doubt it.

Q Have you contacted any motor carriers to date and made any arrangements as to the utilization of those carriers if you decided to use truckaway service for the line haul?

A You ask two questions. I have contacted motor carriers, but I have made no arrangements for the utilization of trailers because I have no authority right now.

Q Have you entered into any negotiations or discussions with them as to the availability of their services in the event you got this authority?

A Not negotiations but discussion. Basically over the telephone with the various marketing departments of the carriers as I tried to state in my direct examination who are listed in the telephone book.

Q I want to clarify one thing. Did you testify in calling these carriers that they said they would not handle a single automobile? In a truckaway service?

A That is correct in any case.

Q Did they say they would not handle such a movement or that the rate charged for that particular car would have to be a particular truck load rate?

A In one instance, and you are testing my memory now, because I can't remember which carrier this was, they said I'd have to pay for the whole truck, otherwise they could not do it. In all the other instances, and I think there are about 7 such carriers listed in the telephone directory, they said they would not handle this business, wouldn't handle a car.

Q They said they would not handle a single car even if you were willing to pay the applicable rate?

A After they said they would not handle it I went no further.

Q Do you remember calling a carrier by the name of F. J. Boutell in the New York area?

A Yes, sir, I do.

Q Do you know when the call was made and to whom you spoke?

A I recall the call was made about a month and a half ago. I do not know the person to whom I spoke.

Q Do you know where you called?

A I recollect it was somewhere in New Jersey. However, I could check more accurately if you will let me look at the yellow pages because whatever number was so listed that is the number I called.

Q Do you recollect calling a carrier by the name of Nu-Car Carriers?

A I think so.

Q You are not sure about that?

A Again, whoever is in the telephone book that is who I called. If someone has a telephone book I can tell you exactly who I called. I do not recollect them.

Q Do you remember when it was you called?

A Yes. These calls were made at the same time.

Q Do you remember the name of the individual you may have talked to at NuCar Carriers?

A No.

Q You made no such record of that?

A No, sir.

Q I take it, sir, as a result of the certifications of support that you have for the motor carrier application you are not limiting the service to the transportation of single automobiles in driveaway service for individuals only?

A That is correct.

Q You propose to handle traffic for, shall we call them, commercial organizations as well; is that correct, sir?

A Yes, sir.

Q You will hold out such a service?

A Yes, sir.

Q Did I understand correctly that at the present time you have one rate for a single car, this is motor carrier, AAACON, one rate for a single car but if a shipper has traffic in excess of one car you give a different rate or better rate?

A Let me clarify that. This is in our tariff and it spells out the fact if we get from one shipper at one time two automobiles going to one destination out of a single point of origin, and I may be wrong on the precise language, but that is what the intendment is, when we get a shipment of two vehicles, two to four vehicles, we have a rate for that, and when we get five or over we have a rate for that. The intendment is these moves, they are kind of a lot, a single group of vehicles.

Q If two or more vehicles are tendered at a single time going to the same destination the rate per car is better than if only one is tendered; is that correct, sir?

A That is correct.

Q If I understand the wording of your AAACON application correctly other than shipments that have had prior movement by rail the only traffic you propose to handle is traffic that's had either an immediately prior or subsequent movement by freight forwarder; is that right, sir?

A If that is what the application says, yes, then it is right. I don't have a copy in front of me. Do I?

Mr. Kiel: Yes. It is on the first page.

A Yes. It says restricted to shipments having an immediately prior or subsequent movement by freight forwarder on a freight forwarder bill of lading.

Q Let's take immediately prior, for example. Does that mean that you would pick up traffic and take it to some point where the freight forwarder would then pick a shipper?

Mr. Kiel: If your Honor please, I don't think that is a fair question. This language is language used by the Commission in granting authority to motor carriers who pick up freight in behalf of a freight forwarder which is tendered to the forwarder and delivered then to the consolidation point of the freight forwarder on a freight forwarder bill and then at the distribution point takes it as a carrier for the freight forwarder and delivers it to the consignee, and the through shipment from origin point of origin to the final destination is freight forwarder billing. There is no intention of interchanging or connecting with the freight forwarder. We are just performing a service within the scope of the freight forwarder authority, and this is the way the Commission has worded its motor carrier grants. I selected them because the Commission words similar authority that way.

Mr. Hill: Mr. Examiner, I am trying to find out from the witness what it proposes to do by the language of his application, not counsel's understanding as to the use of such wording by the Commission. I think it is only fair that I be allowed to question the witness along these lines. I believe the witness if he does not know or understand, he can say so.

Exam. Sutherland: Yes. Mr. Zola, do you want the last question read?

The Witness: Yes.

Exam. Sutherland: Will you read the question?

(The record was read by the reporter, as follows:

"Question: Let's take immediately prior, for example. Does that mean that you would pick up traffic and take it to some point where the freight forwarder would then pick a shipper?")

Q Where the freight forwarder would then take over and handle that traffic on to some destination?

A Well, my apprehension of the meaning of this is that the freight forwarder in this particular instance would handle the entire deal, restricting the motor carrier to pick up at a given point and bring to a given point, restricting the railroad to pick up at the point the motor carrier delivered it to, and delivering it to some other point, and, finally, restricting the motor carrier again to pick it up at the final point where the railroad dropped it off and deliver it to the destination. That is my apprehension of the scheme we have evolved.

Q Your carrier then would be performing a portion of the freight forwarder movement rather than providing service immediately prior to movement by freight forwarder; isn't that correct?

Mr. Kiel: I submit this is argumentative and will serve no purpose. The language speaks for itself. The description indicates it is delivered on a forwarder bill of lading. It is words of art that the Commission has used for this purpose and what purpose will be served by going into word by word, trying to take apart a definition by the Commission as used for a certain purpose -- I thought I explained exactly what and why we selected the language, and I don't see any purpose in going back and forth at the witness word by word.

Exam. Sutherland: Objection overruled.

The Witness: Say that again.

Mr. Hill: Could I have the question read.

Exam. Sutherland: Will you read the question?

(The record was read by the reporter, as follows:

"Question: Your carrier then would be performing a portion of the freight forwarder movement rather than providing service immediately prior to movement by freight forwarder; isn't that correct?")

A Well, we would be performing, as I said -- I don't know whether that is prior to another piece of a freight forwarder movement or part of another freight forwarder movement. In that respect I don't know what the legalities of a freight forwarder movement are. I suppose that the freight forwarder would contact the railroad. Maybe that is a freight forwarder movement. There would be three movements involved the way we apprehend the plan. I really am honestly in no position to say if this is exactly what this means or does not mean. I can only tell you my understanding of what we want to do.

Exam. Sutherland: What do you mean when you say three movements?

The Witness: In other words, AAACON, the carrier, would pick the car up from the home of the car owner and would deliver it to the rail head. That is number 1. Number 2, the railroad would then move it from Point A to Point B. That is movement number 2. Finally AAACON would receive the car again and move it from Point B to the home owner's desired point of destination, and that would be the third movement. That is in general what we apprehend. I take it we presently haven't any disability to move anything with the prior or subsequent movement by freight forwarder, there is no restriction in our authority to that extent right now.

Q Then why are you asking for that authority here?

A I believe that counsel in his opening statement made clear the fact this is something we believe we can do. On the other hand, there is an open question with regard to it.

Q Is there a question as to the ability of your company to pick up traffic in a driveaway service and take it to a point where you would tender at to a freight forwarder?

Mr. Kiel: May I, as counsel, indicate in the Dependable case which was referred to in Exhibit 9 we indicated on the record we thought we had the authority to pick up and deliver freight in connection with a freight forwarder. There were questions about that and on brief in that case questions and discussions about that, and the only waythat I knew to resolve an issue of interpretation of authority, of operating authority is to file an application and make known to the Commission that we believe we already have the authority. On page 3 of the application we indicated we believe we had the authority. What we are filing this application with regard to that part is to seek a resolution of the question with respect to the operating right restriction. That is the reason why and that is the issue that has been raised and I don't know what else I can say.

Mr. Hill: I am simply trying to find out from the witness of the company what question there is if any with respect to the present authority of this applicant to handle traffic in a driveaway service from a point of pick up at an individual's home or a company's place of business and take it to a forwarder's consolidation point. Is there some question?

If there is I would like to know the question as to whether the carrier presently has that authority.

Exam. Sutherland: Can you answer that?

The Witness: Well, I believe that is the whole point of our being here to resolve that question. It seems to me that a question was raised.

Exam. Sutherland: Who raised the question?

The Witness: Someone raised it with my counsel. Was it the Commission itself?

Mr. Kiel: No. Mr. Examiner, the question came about -- we have a restriction in shipments having a prior movement by rail and to the extent that a freight forwarder might use as one of its underlying carriers a rail carrier and the freight forwarder movement would have use of a railroad underlying service before it would be handled by AAACON in the driveaway service -- questions were raised whether that present restriction in the authority against shipments having a prior movement by rail carried over in shipments having a prior movement by freight forwarder when the freight forwarder was using freight forwarder.

Exam. Sutherland: In other words, you are looking at it from a combined point of view. I think your question was based on just the certificate as is, as they have it at the present time.

Mr. Hill: My last few questions relate to this carrier's ability or authority to handle traffic and take it from its original point at the place of business or the home of somebody who wants to ship it, take it from there to the consolidation point of the forwarder. That is not a prior movement by rail situation. This is at the origin there I am talking about now.

Mr. Kiel: I did not understand. We don't believe that there is any question but that we have that authority because we don't have a restriction against handling shipments which had a subsequent movement by rail which most carriers of this type have.

Exam.Sutherland: But apparently if they get their freight forwarder authority and the freight forwarder used rail then there would be some question in your mind.

Mr. Kiel: For the final delivery from the end of the rail portion of the freight forwarder underlying service.

Mr. Hill: My question is why does the application ask for authority involving shipments having an immediately subsequent movement by freight forwarder if there is no question as to their authority at present?

Mr. Kiel: The application was filed and the language was selected to give it a totality. This was my choice, and the reason is as I have explained. We don't think there is any question about it. We think we have it. It was written this way. Counsel is a little bit conservative and does things the way I thought was right and that is the reason why we have something which is duplicating what we now have, and that is why we are also indicating no duplicating authority is requested as part of the commodity description.

Q Now, sir, if you provide a service whereby your company picks up automobiles and drives them to a freight forwarder consolidation point I assume you would expect to use regular drivers rather than these casual drivers for that service; is that correct?

A I would say in most cases, although I can postulate a case where we might use a casual driver.

Q But in almost every instance they would be regular drivers; is that correct?

A I would say so.

Q Would the same be true at the other end if you took traffic --

A Yes.

Q -- at a point of destination of the freight forwarder? In other words, his break bulk point of destination and delivered it to the ultimate destination point, you would use regular drivers?

A I would say by and large we would, yes.

Q How far do you propose to travel in providing service at the origin end and the destination end in conjunction with a line haul movement with a freight forwarder?

A As far as required by the facts of the given shipment.

Q There is no practical limit to the length of these movements?

A The only practical limit would be a closer point of origin where we might be able to do it and might be able to consolidate a little, but we have the ability to work as we have to and from all points in the United States and we would continue to do that.

Q You were seeking in the freight forwarder application authority between all points in the United States just as you are in the motor carrier application; isn't that correct?

A Yes, sir.

Q You are here holding out a service as a freight forwarder to handle traffic actually between all points in the United States?

A Yes, sir.

Q What is the significance, if any, of the origin and destination points shown on Exhibit 6, sir?

A Exhibit 6?

Q That shows charges --

A They are a mere sampling. They are a mere sampling. They are points that are fairly active and as I say they are a mere sampling.

Q Isn't it a fact that the freight forwarder service would only be feasible where there would be some volume of traffic?

A That is correct.

Q Moving from one railhead or one point to another, such as New York to Miami?

A Such as but not exclusively by any stretch of the imagination, sir.

Q But an example, isn't that correct?

A Yes, we need volume to operate this at a profit with regard to rail, with regard to truck, we need a good deal less volume. I would just state for your question further the fact that there is a New Jersey headquarters for trucks that have to be deadheaded all over the United States. Some of these trucks carry authority with them and at that point we can use those trucks for even two car lots at a very good price.

Q What trucks?

A I am talking about regular 40-foot vans which will carry two cars at a good price.

Q You say you are proposing to utilize that type equipment?

A That is correct. I say among other types of equipment. There are all sorts of ways that we will be able by freight forwarder to move these vehicles around, rail, overhead carrier, deadheaded van.

Q Are you saying the forwarder would acquire the van equipment and utilize it

A No, sir.

Q Who will acquire the vans?

A There are carriers, single line carriers, a truck driver who happens to have rights for a given route. All these boys come into New York. They have a lot of equipment here. We have to try to get it back and make it pay and what we would do we would use their authority as a freight forwarder giving them the carrier's authority. They have in many instances told us they have had authority to move these cars.

Exam. Sutherland: You would not just take their word?

The Witness: We would check the authority. Certainly.

Q Give me an example of one such carrier you would propose to utilize?

A I could not give you the name of anyone. This is a phone call I made. I tried to determine the availability of these carriers, and sure enough they happened to be there.

Q Are these regulated carriers? That is carriers that hold authority from the Interstate CommerceCommission.

A To the best of my knowledge.

Q For the transportation of used passenger automobiles?

A To the best of my knowledge. That is what they said, and to the best of my knowledge that is true.

Q Did they ever show a copy of any certificate?

A It never came to that. We don't have authority to do it right now.

Q You don't know the name of any such carriers at this time?

A Yes. However, there is a gathering point in northern New Jersey for these fellows.

Q Are you going to tender traffic to them without first examining these certificates?

A Not a chance.

Q Have you determined at this point in time which railheads you expect to utilize initially in the event the forwarder authority or permit is granted?

A You mean with regard to any given city? I don't understand that.

Q Yes. I take it you have to start some place. In the event you get the freight forwarder permit you are seeking and that is Auto Trip USA --

A Right.

Q Have you made a determination of where you would commence your forwarder servide?

A Well, in Chicago, Dalls, Detroit, New York, Los Angeles, San Francisco, Miami, and all the other cities in the United States. Maybe I am missing the thrust of your question.

Mr. Hill: I think you are.

Q You agree with me in order to operate as a forwarder you have to have a substantial volume of traffic?

A That is correct.

Q I used an example New York to Miami. We agreed there would be traffic between these two points that possibly would justify a forwarder service?

A Right.

Q What other points have you chosen to initiate a forwarder service in the event your permit is granted?

A In all points. As soon as the traffic is tendered away we will go.

Q You will immediately hold out forwarder service between all points in the south?

A Yes, sir, and I can give you an example of what happens. We got a phone call from a fellow with 15 pieces in Evanston, Illinois, and he wanted them moved by rail. These phone calls are not unusual. They come in often and this is the type of service we are ready to provide.

Exam. Sutherland: When you say 15 pieces?

The Witness: I mean 15 automobiles.

Q Evanston is adjacent to Chicago, Illinois; isn't that correct?

A Yes, that is correct.

Q Do you propose, for example, if this application for a freight forwarder permit is granted to immediately initiate forwarder service between Topeka, Kansas and Huron, South Dakota?

A To the best of our ability, certainly.

Q Have you made an investigation to see whether there are facilities available for such a service?

A No, I have not.

Q Have you made any investigation as to facilities in any point for the forwarder service?

A Yes.

Q At what points have you made an investigation?

A All my investigation has been made in New York, but it has covered various points throughout the United States. I mean there are a lot of points in the United States. If you want me to list a bunch of cities I asked about I can do it, but it would take some recollecting. I tried to make as full an investigation with regard to the idea of a total country-wide coverage as I possibly could. Is that what you mean?

Q Let me ask you this. In order to conduct the forwarder operation between all points in the United States you must have line haul operation suitable for such freight forwarder traffic?

A That is correct.

Q And, number 2, you must have traffic in sufficient volume to be able to make that operation feasible?

A That is correct.

Q Are you telling me today that you say that there is sufficient traffic and sufficient volume that there are facilities available between all points in the United States for this forwarder operation?

A As we apprehend the type of movement there certainly is. Remember we are going to move cars from adjacent points to one given point by use of the motor carrier. We are then going to put them on a train and move to another point and then spread them out again.

Q But you don't know just how far you will move them to these consolidation points?

A I said to you, as far as is necessary. There is no mystery there. If it is 500 miles it is 500 miles. You get a driver, put him on a plane and he comes back with the car.

Q Would you move cars 500 miles and then ship automobiles truckaway?

A Or by rail as the shipper desired. On the other hand, if we had a truck and the truck was going by that fellow's house maybe we would have him roll it right up then and there.

Q Do you intend to present any witnesses from railroads with respect to their facilities, holding out and so forth to participate with you in this traffic?

A Not to the best of my knowledge.

Q Have you discussed with any representative of the Penn Central Railroad the availability of these tri-level or bi-level rail cars?

A Yes, I have.

Q To whom did you speak with the Penn Central and when was this, sir?

A In February of this year. Mr. Graves and Mr. Turner.

Q Where are they located?

A They are located in, I think one is -- they are both in New York.

Q Did they tell you that they have available such equipment at the present time to make available to your company?

A Penn Central never got to that point with us. The -- Penn Central was quite involved in our authority. The last we heard from Penn Central they had submitted to their legal department the question whether we had the right to do this by substitution of service, and I know nothing further from them. They indicated, and again this is somewhat hazy, but they did indicate that should they find we have the authority business could be done.

Q Did they ever give you the number of trailers that would be available at any given time?

A No, sir, it never came to that.

Mr. Kiel: You mean rail cars?

Mr. Hill: I mean rail cars.

A No, sir. It never came to that.

Q Did you ever discuss with themthe forwarder service we have been talking about today other than the substituted rail - motor service?

A Yes, sir.

Q Did you discuss the availability of the tri-level or bi-level rail cars with a representative of the C & O Railroad?

A Of the C & O -- I can't say no and I can't say yes. If you will let me amplify. I had a very lengthy discussion with Mr. John Moag who is one of the marketing directors of the C & O, and the sum and substance of my discussion with him related to a tunnel just outside Baltimore, Maryland, which was so constructed and which was an integral part of their railroad so that they would be unable if they had the tri-levels to move them through that tunnel, so that, therefore, C & O does not come into it with regard to a north -south railroad. They can move bi-levels, which are a little less economical to move than tri-levels; so we did not go too much into the availability of their cars.

Q Did they say they had any bi-levels available for you?

A Yes, they had bi-levels available.

Q Did he say how many?

A No, he said there would not be too much trouble with them.

Mr. Hill: I believe that is all I have. Thank you.

The Witness: You are welcome.

Exam. Sutherland: Mr. Davis?

Mr. Davis: Yes.

CROSS-EXAMINATION

Q (By Mr. Davis) Mr. Zola, you are not saying here that you are going to guarantee a delivery time to a shipper?

A I did not say it, and I did not not say it.

Q Well, are you?

A I don't think we can guarantee a delivery time. I don't think it is the obligation of any shipper to guarantee a delivery time.

Mr. Kiel: A carrier.

The Witness: A Carrier. I beg your pardon.

Q You do not propose to publish in your tariff a provision whereby you will guarantee that a shipment will be delivered at the time specified, do you?

A No, sir, it can't be done.

Mr. Davis: It can be done, but I am just asking you what your intention is.

Q Now, looking at Exhibit 6, is your present tariff on a mileage basis, strictly on a mileage basis?

A No, sir.

Q What is your tariff number, by the way?

Mr. Kiel; 5.

A 5.

Mr. Kiel: Let me double check. I want to make sure I gave you the right answer. I answered for the witness. Yes, 5 is right.

Q As I understand there will be a separate charge, take the first example in Exhibit 6, there will be a separate charge for picking the shipment up at the residence or in the case of some dealer or commercial account, there will be a charge for picking it up at the origin point and taking it to the consolidation point?

Mr. Kiel: I object. That is not the fact. The witness testified specifically there would be one charge from origin to destination. It would provide pick up where required, or you could deliver to the freight forwarder's location if you so desired. The witness specifically testified to that.

Exam. Sutherland: I don't think we should --

Mr. Davis: I should like to make this comment. The practitioner has a habit of making an objection and in pointing out what the witness said or perhaps what practitioner thinks he should have said, and I think he should be admonished to make a legal objection, stating his grounds for it and not get off and put words in the witness' mouth.

Exam. Sutherland: I will overrule the objection Let's get an answer.

Q Didn't you say, sir, to clear up the point that's been raised so far, the charge of $1,135, that will not be the total charge on a car moving from New York To Tampa, Florida, will it?

A I can guarantee it won't be the total charge.

Q Yes, sir, and in addition to that I believe you said there would be $5, for example, for loading and unloading; isn't that true?

A Let me take you back a little bit. This $1,135 is a charge for a rail car and not for an automobile. Your question stated it was the charge for an automobile, sir. To determine the charge per car you have to be able to divide that number by 12 or 15 or some number in between in order to determine in the case of an over-all charge with regard to any given automobile. However, you have to make a subsequent division depending on how long the vehicle is.

Q That would give you generally a per car rail charge?

A That is correct. That is correct.

Q In addition to that there will be a charge for picking up at the origin point and delivering to the consolidation point, is that correct?

A It will cost the customer more money if he wants it picked up at his home and delivered to the consolidation point.

Q Then there will be an additional charge at destination in delivering it from the consolidation point or the distribution point to the ultimate consignee's place of business or his home?

A It will cost the customer more money to have it delivered from the destination point of the rail carrier to his home.

Q What basis will that charge be on?

A It will be based -- you mean the delivery charges on both ends?

Q Yes. Will that be on a mileage basis or a minimum charge or what?

A It will be on a mileage basis.

Q If it were only 5 miles, for example, you would have to have a minimum charge for that?

A It would probably be a combination of miles and hours.

Q Do you have any idea what those charges would be? Have you thought about this at all?

A We have in our tariff right now a pick up charge based on a maximum of $4 an hour plus the transportation charge to and from the office involved for pick up. I would imagine it would be somewhere in that neighborhood. I could not tell you exactly.

Q Would that apply on both ends?

A Yes, sir.

Q Now, at the present time what is your charge from New York to Tampa by driveaway using a casual driver?

A In season, meaning the winter months, when the traffic is extremely heavy, it is $99. Out of season it is $90. Now this also -- there may be appended to this a pick up charge as well although not a delivery charge.

Q What about to Miami?

A The same price.

Q Now the $5 that you mentioned that would be in addition, is that the charge that the loaders and unloaders charge?

A It is a total combined charge. Actually it is $4 and change.

Q I understand that. You mentioned $5. That is the reason I am mentioning it.

A Yes.

Q But I am asking you what is that charge for?

A That is payable to the loader and the unloader for moving the car on and off the rail car, moving the automobile on and off the rail car.

Q There is a $5 charge when it is put on?

A No. There is a total of $5 in charges. Actually it comes to 1.63 to take it off and 2.80 to put it on, a total of about $5, give or take a few pennies.

Q Now, how far will you distribute from the destination distribution point by driveaway servide?

A As far as need be.

Q As far as necessary?

A Yes, sir.

Q Where, for example, would he line break as to where you would use your own drivers and where you would use a casual driver, over 100 miles, 50 miles, or what?

A I think that will depend on the individual circumstances of a particular movement. For example, let's say we had a car in Atlanta that had to be moved to Jacksonville and for some reason we had put it on the line to terminate in Atlanta, I might have very well used a casual driver because he is an easy driver to get hold of to go from Atlanta to Jacksonville. If I had to use a professional driver into some small town in South Carolina, that is more likely because it is more difficult to get casual drivers to go there. I would say the majority of cases it will be professional drivers and it depends on things other than mileage, it is all the facts of the case.

Q Is there any amount of mileage which would be involved which would make it more desirable to use a casual driver rather than a professional?

A I don't think I could give you that. No. Actually I don't think I could give you a straight answer to that. I think it is quite difficult. You have to view these things as individual shipments.

Q When you use a professional driver of your own, so-called professional driver, for example, one out of Atlanta, Atlanta up to Charlotte, North Carolina, for example, how do you get him back to Atlanta?

A Bus him or fly him or maybe we have a delivery in Charlotte to come back to Atlanta.

Q Do you pay his expenses?

A Sure. We pay him, too.

Q If he has to stay anywhere overnight do you pay it?

A In the cases he has to, certainly.

Q Now, where would a shipment destined to Charlestown, South Carolina, for example, moving by forwarder, by rail, where would that move to distribution point, where would the distribution point be?

A It would depend on what other cars we have going. Jacksonville is a possibility. Savannah is a possibility.

Q Or it could be Atlanta?

A It could be Atlanta.

Q Could it be Tampa?

A That is doubtful.

Q Why?

A It is quite far away, Tampa, and we would try to get it to another point. If it had to be, theoretically it could be Tampa. You see we have a rare ability here because we have the combination of the rail movement and the driver, which means we can do something that very few carriers can really do. This is our whole scheme.

Mr. Davis: Mr. Examiner, I move to strike that.

Exam. Sutherland: We won't have it stricken, but I think you went off on a tangent.

The Witness; I am sorry. I was trying to put color into this thing to show him what exactly we had in mind.

Exam. Sutherland: You mean the last question about Charlestown?

The Witness: Where we would deliver it and how far and how much it would take to move it. I am sorry if I was out of turn. I apologize for it.

Mr. Davis: Don't bother. I will protect myself with objections and motions. I would appreciate it if you would try to be responsive to the question.

The Witness: Surely.

Q As I understand your method of operation here you will move cars to whatever distribution point you have a flow of cars at the particular time a particular car is offered to you or tendered to you for transportation; is that correct, sir?

A Well, with some modification. I think flow is a very important part of it.

Q That is the way it has to work, isn't it? If you have a car destined for Charlestown, South Carolina and you don't have any other traffic moving to the distribution point or the railhead facility at Savannah, for example, but you do have going to Jacksonville then you have to move it to Jacksonville and then drive it to Charlestown?

A Not necessarily because I can still call the overhead motor carrier and say, have you room on your truck for one of mine, and work it out that way.

Q I am talking about strictly forwarding by rail.

A Forwarding by rail, I would say it has to depend on flow, surely.

Q Of course you are going to hold your cars until you can get a carload of your tri-level or bi-level cars?

A Sure.

Q Would you show me, sir, your underlying documents to Exhibit 4 showing the days where you had cars moving from New York to Florida?

Mr. Kiel: The six boxes of bills are here. They were made available since the lunch recess. You may examine them and take whatever bills out you want and we will help you to the best of our ability, but if we have to start making searches for those records just to answer questions then I think we will not be able to get finished ever.

Mr. Davis: It is not my duty to go through six boxes of bills that I know nothing about.

Mr. Kiel: We will explain them to you.

Mr. Davis: It took me an hour to eat today and I had no time during lunch to examine the bills, but I don't think that is an unreasonable request to ask the witness to give me the bills, underlying Exhibit 4.

Mr. Kiel: We have tendered them, Mr. Davis. They are next to you, within two feet of your chair, and they are available for your examination. I made that on the record this morning, they are available to you. If you want a recess we will take a recess and help you in any way we are able.

Exam. Sutherland: Mr. Davis, could we do this, go on to questions of Mr. Ross or Mr. Ewald, and you look at the bills?

Mr. Ross: Mr. Examiner, I might state that I'd attempted to shorten this proceeding by doing that. I submitted 8 bills out of 2,200 some 45 minutes ago. I have not got them yet. I asked for them and I don't have them, and that was just the beginning. I don't know whether I have a question about them or not, but the fact is there are six boxes and there are many bills not involved.

Exam. Sutherland: Since you made the request and apparently he has the bills could he give that to you now?

Mr. Ross: Yes, I will take those at the start. I am not trying to say my examination should foreclose Mr. Davis in any way.

Exam. Sutherland: What I was trying to do is, I was wondering if we could go ahead probably with Mr. Sack's cross-examination and Mr. Ewald's while you are examining the bills, is that possible?

Mr. Ross: As far as I am concerned you may go forward.

Exam. Sutherland: Is that all right with you, Mr. Davis?

Mr. Davis: Yes, sir, but I need to, all I want are New York to Florida bills and I don't see how the witness can get those bills for me and answer questions at the same time.

Exam. Sutherland: Off the record.

(Discussion off the record.)

Exam. Sutherland: On the record. Let's take a short recess at this time.

(Short recess.)

Exam. Sutherland: Back on the record.

Q Mr. Zola, on the underlying documentation that you have brought to the hearing room the actual transit time performed is not reflected on those documents; is it?

Mr. Kiel: I object to that question. The documents were made available for the purpose of supporting the information contained in Exhibit 4. That is not a part of Exhibit 4. There was no evidence on direct examination with regard to that and I object to this cross.

Exam. Sutherland: What about that, Mr. Davis?

Mr. Davis: Mr. Examiner, I am not saying that is a part of Exhibit 4. I am just establishing the fact that there is nothing in the hearing room whereby the present transit time being performed by the applicant can be established. One of the purposes of the application was stated to be the transit time that could be reduced and delivery time could be more or less met in the case of where a specified delivery time was requested by the shipper, and all I am doing is just pointing out we don't have anything here to show what transit time he is now performing and I will ask that in the way of a general question.

Mr. Kiel: If I might be heard, first Mr. Davis is a party only to the AAACON application. Secondly, there is not a thing in the AAACON application which indicates anything about time in transit or in any other information.

Exam. Sutherland: I think, sticking to one thing at a time, the way you have asked the question was related to Exhibit 4; wasn't that right?

Mr. Davis: No. The underlying documents to Exhibit 4. Those are the only underlying documents we have here. I will be willing to ask the witness generally.

Q Sir, you don't have anything here in the hearing room to establish the transit time you have performed on shipments between points within your present operating authority, do you, sir?

A I can't answer that question directly. May I amplify?

Q Yes.

A In the documents that you saw I suspect that the majority of them will reflect transit time because the pick up and the estimated due date represents the approximate transit time.

Q That is what -- that is not what I am asking.

A Those dates are on these documents.

Q The estimated arrival time or delivery time of the shipment is on there. That is true.

A Right.

Q But that is the date that the shipper gives you as the date he would like to have his car delivered?

A No, sir. That is the date we give the shipper as to when he can expect his car.

Q That is the date you estimate for the shipper when the car will arrive?

A That is correct.

Q All I am asking now is you don't have anything here to show when the car was actually delivered?

A No, sir. We do not.

Q Likewise we can't look at the underlying documents here and tell precisely how the car physically moved or by what method, whether it was by driveaway all the way, or forwarder, or any other method?

A By simply looking at those documents?

Q Yes, sir.

A No, sir. You cannot.

Q Is the make up of your company going to be -- is there going to be any affiliation between AAACON and Auto Trip USA other than common stock ownership in the same persons?

A Let me correct it. It is not common stock ownership. Auto Trip USA is a wholly owned subsidiary. It is as affiliated as it can possibly be.

Q What will be the subsidiary?

A Auto Trip USA.

Q Auto Trip USA?
A Right.
Q That will be a subsidiary of AAACON Transport?
A It is now.
Q It is a subsidiary?
A It is. Yes.
Q Who holds stock in Auto Trip USA at the present time?
A AAACON Auto Transport.
Q Who holds the stock in AAACON?
A My brother, my father and myself.
Q Now, in those cases where you acting as a forwarder move a load of cars by rail, for example, to Miami and there need a motor carrier to provide the distribution service naturally you will use AAACON whenever that carrier is in a position to provide the service, is that right?
A Certainly.
Q In the event AAACON was not in a position to provide service on a particular movement then you would use some other carrier such as perhaps protestants here; is that correct?
A Yes, sir.
Q Now, if the forwarder application being heard here, Mr. Zola, were granted and the motor carrier application were denied and if your present authority were interpreted against the position which you now take -- that is, you cannot

handle cars freight forwarded by rail -- then would you be interested in still conducting the operations as a freight forwarder only?

A Yes, sir.

Q And in those particular cases, in that particular case then you would use the services of the protestants here; is that correct?

Mr. Kiel: So the record is clear there is no question that we have authority to originate traffic which the freight forwarder might later use rail service for because if you will recall the present restriction to AAACON authority is only when there is a prior rail movement; so if it it initiated from someone's home or business there is no prior.

Mr. Davis: I am well aware. There is no question of that.

Mr. Kiel: All right.

Q Will you answer my question?

A I will say this, probably the shaping of the operation would be a little different. Very likely we would have more customers picking up their cars at the railhead rather than using carriers that use overhead trucks for the simple reason that I don't think within the scheme we are talking about we are going to be able to assemble practical loads from the railhead.

Q You are talking about destination?

A Right. Let me see if I can give an example. If we have

10 cars going all over southern Florida about the only way we can get them there is to drive them individually. It would be most difficult for us to use any truck carrier that I know of in a situation like that, so I think the only result would be that the public would be less served.

Q Are you under the impression that the protestants have no driveaway authority?

A I know of none, frankly.

Q If the protestants, specifically Motor Convoy, whom I represent, for example, would have or does have driveaway authority and could driveaway a single car, for example, from the railhead, the distribution point, the destination to the ultimate consignee's home or business, or whatever it might be, then your answer to my question would be that, yes, you would contemplate using that service; is that correct?

A Well, with one exception. If we could make proper arrangements and if the prices were right, frankly, then I think the answer would be, yes -- if we could price it out properly so that the whole through movement made sense.

Q In other words, at the present time you know of no reason why you could not use the driveaway authority of Motor Convoy as a forwarder?

A I don't know that Motor Convoy has that authority.

Q But assume they do, you know of no reason why you could not use it?

A No. I know of no reason.

Q Now, I was interested in this business about handling some of these vehicles in vans from this pool you are talking about. Would you explain what pool they have?

A That is a group of truckers that headquarter over in New Jersey, and what they do is they attempt to move the commodities which they have a right to move back to their destinations. They are, for example, a Mr. John Jones, trucker, who has household authority to move from Kansas City to New York and New York to Kansas City.

Q Let me stop you there and see if we can clear this up. Are you aware of the fact that ordinarily the trucker himself does not have operating rights?

A In certain cases, yes. In certain cases,no.

Q That is true. There are some few, I suppose, that hold a piece of authority, and buy their own equipment, and even drive their own equipment, but ordinarily when you see a household goods van he has that equipment leased to the carrier; are you aware of that?

A Yes. That is the majority of cases. On the other hand, the minority here is such a large group of people.

Q Are these general commodity carriers you are talking about? Can you name me one individual that drives his own truck and that has authority to transport automobiles in secondary driveaway movements?

A No, sir. It would be truckaway anyway, but the answer is no, I can't. The only thing I did in respect to this is I did call this pool and they assured me that they could line haul automobiles two in a van. Actually they had never thought of doing it and I discussed it with them at some length and they said they had people that certainly were capable and willing to make such moves.

Q Do you know what rate would be applicable?

A No, sir. That was one of the open questions. He said, "I can't tell you." It will have to be what they have on file, and so forth and so on, which we were going to look into. We did not do a great deal of research on that. That was something that came to us as an idea. It seemed to us it is a practical use of equipment which was not being utilized and they seemed to be interested in it and we were interested in it. We left it there. There was no specific research done on that.

Q Do you know of any carrier at the present time that transports regularly in the normal course of business automobiles in van type equipment? Can you name me a carrier?

A Yes. The household movers. Household goods movers do. Allied Van Lines does. I know this for a fact.

Q In a household goods van?

A Yes, sir.

Q With a possum belly?

A A possum belly is a new one on me.

Q Household goods movers would handle a car like that under its authority to handle household goods, and personal effects, for example -- is that your understanding of how they would handle it?

A I frankly have not had that much understanding of that. Again I can only tell you what I was told, which I have.

Q And likewise you could not give us the number of carriers about which you are speaking?

A No, sir.

Q The amount of equipment they have?

A No, sir.

Q Or the type of equipment?

A Absolutely not.

Q Now, just one other question, sir. The underlying documents which you have furnished us here today, what do you call those documents?

A We call that the green copy of the bill of lading.

Q That is the contract between you and the shipper, is it not, sir?

A That is correct.

Q State whether or not it is a fact, sir, that on that document you state on there that -- let me just get one.

A I have a copy here. You just say what it is.

Mr. Kiel: If your Honor please, I want the record to indicate that counsel is not participating in the freight forwarder application and that the documents are supplied for the purpose only of substantiating the information in Exhibit 4, namely the number of shipments moved from one state to another during a stated period of time, not for the printed matter on the document, not for the color of the paper it is printed on, or what have you. If the questions are going to be --

Exam. Sutherland: I think probably for the record it is a good question to ask just what the underlying documents consist of.

Mr. Kiel: I have no objection to that, but he is going to ask apparently what some of the printed material means.

Exam. Sutherland: Is there a question pending right now?

Mr. Kiel: No.

Mr. Davis: I believe those are all the questions I have, Mr. Examiner.

Exam. Sutherland: Mr. Sack, do you have any questions?

Mr. Seck: Yes.

CROSS-EXAMINATION

Q (By Mr: Sack) Mr. Zola, you indicated that AAACON has provided no motor carrier service in which rail has been substituted for a portion of that service. By the same token has AAACON performed any service by motor carrier on behalf of a freight forwarder to date?

A I don't know. I don't know. Not to the best of my knowledge, but I don't know.

Q You spoke of professional drivers. By that term do you mean full time employees and also part time employees?

A Yes, sir.

Q And part time employees again being distinguished from the casual driver who is generally a one shot or once a year situation?

A Yes, and who are not employees.

Q Other than your office personnel who can fill in as drivers do you have any people employed at any of your Florida or Georgia offices engaged exclusively or primarily as full time or part time employee drivers?

A Yes, sir.

Q At what locations do you have such personnel in Florida and Georgia?

A Atlanta, Georgia, right offhand, because that is the only location we have there. Miami Beach, Florida.

Q Wait just a moment. At Atlanta you have to the best of your knowledge how many employees engaged exclusively in driving?

A I would say two.

Q Okay.

A Miami Beach, Florida; Miami, Florida; both offices.

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A I don't know. I don't know. Not to the best of my knowledge, but I don't know.

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A Atlanta, Georgia, right offhand, because that is the only location we have there. Miami Beach, Florida.

Q Wait just a moment. At Atlanta you have to the best of your knowledge how many employees engaged exclusively in driving?

A I would say two.

Q Okay.

A Miami Beach, Florida; Miami, Florida; both offices.

Q How many in those offices?

A Now you are getting into an area that I will have to give you guesstimates. It is the best I can do.

Q All right.

A I would say probably one in one of the Miami Beach offices and in the other probably two. In the Miami office probably four. In the Jacksonville office probably one. In the Hollywood office probably one. This also varies with the season because when we are busier we have to put on more people. In the Fort Lauderdale office we have probably one. Orlando, probably two. Palm Beach at the present time I am not sure we have anyone at Palm Beach who is doing that. In season we will have two or three people, but not right now. St. Petersburg there are probably two. Sarasota there are probably three, and I think that exhausts the list.

Q What type of driving do these people do? Do they do primarily your pick up and delivery driving from the customer's hotel or apartment house back to your office awaiting the casual driver, or what?

A I would say primarily that is what they do.

Q They don't do over-the-road driving?

A Sometimes they do. We don't have too much call for over-the-road driving.

Q On occasion they would drive a car from Miami to New York?

A On occasion, but a rare occasion.

Q On those occasions you then provide or pay for their return transportation to their employment office?

A Ordinarily they will get another car going back, but as I say those are quite rare occasions. If you asked me about -- well.

Q These Florida and Georgia offices, do they consist of anything more than offices? Do they have storage yards or any other facilities?

A They have arrangements with commercial garages in whose premises they store the vehicles. Other than that they are simply offices.

Q Will you be offering potential shippers as a freight forwarder various rates depending upon whether or not the shipper himself will deliver to the origin railhead or pick up from the origin railhead, or do any one or do both?

A Yes, sir.

Q You will be offering that variety of combination of rates; is that correct?

A Yes, sir.

Q The shippers that you have solicited to support this application and to testify in this proceeding I presume are in a number of cases existing or past customers of AAACON; is that correct?

A I suppose you would better ask them rather than me. To the best of my knowledge they are, but better ask them.

Q Did you do any of the personal solicitation of these prospective shippers to appear and testify?

A No, sir, I did not.

Q Do you know whether there was represented to them the approximate rate that would be charged on a freight forwarding movement with intervening rail service as opposed to the driveaway charges they had been paying in the past?

A I do not know, sir.

Q Can you give us a ball park estimate of what the freight forwarding rate would be from New York to say Hollywood, Florida with the forwarder providing both the delivery to origin railhead and pick up in Miami railhead to Hollywood?

A Probably in the neighborhood of about 180 - $190.

Q Or roughly double what the driveaway rate is?

A Yes. Of course that depends on the car, but we are talking about ball park. Yes?

Q Yes. Would you say for any comparable distance or greater distance assuming again the forwarder pick up and deliver providing a complete service that the rate would be close to double what the driveaway rate is?

A No, sir. No, sir. That will vary directly with the cost of rail. The constants there will be the overhead factor and the pick up and delivery charge more or less constant based on the amount of time and mileage invo,ved, but the actual rate will vary with the amount of the charge that the rail will charge to the freight forwarder.

Now, I also should tell you that you have to analyze what driveaway rates are. Driveaway rates are not necessarily based on mileage. The difference, for example, between California and Florida -- we have a $99 rate to California. I am sorry. $29 to Florida and $150 to California.

Q Your tariff I believe you stated includes a local pick up and delivery rate?

A Yes, sir.

Q You stated it was based on an hourly figure plus something else, which I did not catch.

A Cost of transport of the driver to the point of pick up, from the office to the point of pick up, or from the delivery back to the office.

Q And that figure is based on what, a bus rate, a taxi rate, an airplane rate, or what?

A It depends what is available.

Q Don't you have a figure in your tariff, or does it read $4 an hour plus transportation?

A That is the way it reads.

Q On the pick up service that you are presently providing in the Miami area how do your people get to the pick up point from your office?

A I have not the vaguest notion.

Mr. Sack: I believe that is all I have.

Exam. Sutherland: Mr. Ross?

CROSS-EXAMINATION

Q (By Mr. Ross) Mr. Zola, look at Exhibit 3, if you will, please.

A Yes, sir.

Q Do you have that?

A Yes, sir.

Q With respect to and along the same lines as some questions you were being asked by Mr. Sack do you have employees assigned exclusively to the performance of driving functions at any of the points shown in Exhibit 3 other than Atlanta, Georgia and those in Florida that you referred to?

A We do.

Q At what other point?

A All of them.

Q Can you tell me, approximately?

A I would say with perhaps some exceptions. You see this is not firsthand knowledge for me. This is something I know the general scheme of the operation.

Q Can you tell me approximately what the total number of such personnel is employed by your company?

A No, sir.

Q Do you have some 15 you have indicated in Florida and 2 in Georgia?

A Yes.

Q You also indicated that you have with possible exceptions such employees at each of the other offices shown on Exhibit No. 3?

A Yes.

Q So that would bring the total personnel up above approximately 60, would it not?

A Oh, I think so.

Q Can you look at your Exhibit No. 5?

A Yes.

Q Your statement of earnings, and tell me where the compensation paid to those people is reflected?

A It is reflected in transportation expense, officer's salaries, and agents compensation, office salaries and agents compensation.

Q You did state these people were employees, did you not?

A Yes, sir.

Q Why do you say it is also reflected by the term agents compensation?

A Because certain of these drivers are employees of the agents.

Q Where you have an employee of an agent is he carried as an employee on the company books -- namely, AAACON books for purposes of withholding and Social Security?

A No, sir.

Q So that when you say you have such an employee you do not have an employee?

A Yes, sir, we do.

Q He is an employee for which you withhold no taxes?

A That is correct.

Q And for which you do not pay Social Security --

A That is correct.

Q But he is an employee of your company?

A That is correct through the intermediary of an agent.

Q But you consider them employees?

A I do.

Q Speaking of transportation expense, what other sums go into making up that fifty thousand plus dollars?

A You would have to consult my accountant for that. I really could not tell you.

Q Are you going to have your accountant available here to stand cross-examination on Exhibit 5?

A No, sir.

Q Then I will ask you again what other sums make up the figure of transportation expenses?

A I will give the same answer. I don't know.

Q You don't know?

A No.

Q I will ask you the question with respect to agents compensation. Can you break that down for me between the amount paid to any particular agent.

A No, sir.

Q At any particular point.

A No, sir.

Q Can you tell me with regard to Exhibit 3 at what points on that exhibit are your offices staffed by agents as contrasted to employees?

A Surely.

Q Will you do so?

A Yes, sir. Albuquerque, New Mexico is an agent; Baltimore, Maryland are both agents; Boston is an employee; Buffalo is an agent; Chicago is an employee; Cincinnati is an agent; Cleveland is an employee; Columbus is an agent; Dallas is an agent; Dayton is an agent; Denver is an agent; Des Moines is an agent; Detroit is an agent; Fort Lauderdale, one is an agent and one is an employee; Grand Rapids, Michigan is an agent; Hollywood, Florida is an employee; Houston, Texas is an agent; Indianapolis, Indiana is an agent; Jacksonville, Florida, agent; Kansas City, Missouri, an employee; Las Vegas, Nevada, an agent, Los Angeles, California, one an agent and one an employee; Louisville, Kentucky is an agent; Miami, Florida is an employee; Miami Beach, Florida are both agents; Milwaukee, Wisconsin is an agent; Memphis, Tennessee is an agent; Minneapolis, Minnesota is an employee; Montreal, Canada is an agent; New Orleans, Louisiana is an agent; New

York is an employee and agent, two offices and one agent; Norfolk, Virginia is an agent; Oklahoma City is an agent; Orlando, Florida is an agent; Palm Beach, Florida is an employee; Pittsburgh, Pennsylvania is an employee; Philadelphia, Pennsylvania is an employee; Phoenix, Arizona is an agent; St. Louis, Missouri is an employee; St. Petersburg, Florida is an agent; Salt Lake City, Utah is an agent; San Antonio, Texass is an agent; San Diego, California is an employee; San Francisco, California is an employee; Sarasota, Florida is an agent; Seattle, Washington is an employee; South Bend, Indiana is an agent; Toledo, Ohio is an agent; Tuscon, Arizona is an agent; Tulsa, Oklahoma is an agent; Washington, D.C., one an agent and one an employee; Wilmington, Delaware is an agent; Wichita, Kansas is an agent; El Paso, Texas is an agent.

Q And the call stations I understand you do not have persons there other than an answering service?

A That is correct.

Q Is that correct?

A Yes.

Q So you have no staff at those stations?

A That is correct.

Q What facility do you have at Las Vegas, Nevada?

A An agency.

Q Can you give me his name?

A Michael Katz.

Q I beg your pardon.

A Michael Katz. His address is available, but I don't have it right here.

Q For how long have you had an office in Tuscon, Arizona?

A Approximately -- well, Tuscon was opened and closed and re-opened.

Q Is it open today?

A Yes, sir. It has been in operation as an office approximately about 4 - 5 months.

Q Is this latest reopening in the last 4 - 5 months?

A No. The latest reopening was about 2 months. It was 3 months operation prior to that. In the middle was a call station.

Q The situation in Albuquerque, New Mexico, how long have you had an office there?

A Approximately 2 months.

Q Now, sir, you refer to the fact that in New York you have two offices, one is an employee and one is an agent?

A Yes.

Q Is the office at which this agent is located advertised in the phone books in New York?

A I assume it is. Yes.

Q The yellow pages?

A I assume so.

Q Can you tell me under what name that advertisement is carried?

A I think it is Auto Delivery Division of AAACON Auto Transport. I believe that. I could be wrong on that.

Q Isn't it a fact, Mr. Zola, that it is carried as Agents Auto Delivery Division of Drivers Exchange, Inc.?

A You have the old book, sir.

Q When did the new book, as you call it, come out?

A About 4 days ago, I think. Am I right?

Q Prior to 4 days ago did this agent operate for you?

A Yes, sir.

Q Did he operate under the name Auto Delivery Division of Drivers Exchange?

A No, sir.

Q Was an ad carried in the applicable phone book then?

A Yes, sir. In just the terms you read

Q And your lead docket number is on?

A I am sorry.

Q Your MC number?

A 125808.

Q And if the ad appearing in the phone book reading Agent Auto Delivery Division of Drivers Exchange is ICC MC-125808, would that be your company?

A Yes, the MC number would be ours.

Q Are you now stating that your company did not authorize the placement of an ad in the yellow pages of the Manhattan phone book under that name?

A Would you read the name again?

Q MC number.

A Would you read the name again.

Q I will be happy to show it to you.

A No, sir. We certainly did not authorize the placement of that ad in those words.

Q Is the phone number shown the phone number of your agent at that address?

A Yes, sir. I assume it is.

Q You know what the address is, do you not, at which your company does business in New York?

A Yes, sir.

Q Is this one of those addresses?

A Yes, sir, it is.

Q Is this the phone number at that address?

A I assume it is.

Q You say you assume it is. Do you know it or don't you know it?

A I don't know it, offhand. If I refer to my list in the office I can tell you exactly.

Q But you do know?

A It appears to be the advertisement placed by our agent unbeknown to us.

Q So your agent is not completely responsive to your company on the question of advertising, is that correct?

A You can put it that way. I would say he can make a mistake just the same as anyone else can.

Q Does your company also do business as General American Shippers, Inc.?

A No, sir.

Q In that same advertisement does it not appear?

A It does indeed.

Q Does it not also appear individually on the preceding page again as General American Shippers, Inc.?

A Yes, it does.

Exam. Sutherland: Mr. Ross, this is from the previous yellow book?

Mr. Ross: It is from the 1969 yellow book and to our knowledge, Mr. Examiner, it was the current one. If the witness says one came out four days ago I won't dispute that.

The Witness: No. It appears to me that is the current book. I did not know which book he had at the time.

Q This is current?

A Yes. We have no interest in General American at all and no connection to it.

Q Is the agent that does business for you at the phone number shown in the advertisement, does he also do business with a company named General American Shippers, Inc.?

A I believe he owns that company.

Q So that this person is not what I'd call a full time agent in the sense of devoting his efforts completely to your company?

A I'd agree.

Q Can you look at Exhibit 3 and tell me in how many other situations does that occur?

A I really could not say.

Q How many of the offices shown are not full time?

A I really could not -- these offices are all full time, however the various proprietors thereof have other business ventures with which they are also engaged, as frankly do I.

Q I am not questioning what you do.

A The same is true of these offices. Many of them have other interests.

Q Do you know whether or not the agents you utilize also operate in the movement of automobiles but without authority?

A No, sir.

Q By the Interstate Commerce Commission?

A No, sir, and it is not I don't know. I do know that they don't.

Q Do you know whether or not an organization known as General American Shippers, Inc. has authority from the Interstate Commerce Commission for the movement of automobiles?

A It has not, sir.

Q And yet at least your one agent at 450 Seventh Avenue does advertise as holding himself out to do business under that name?

A Mr. Ross, he moves those cars overseas.

Q I am asking you a question, does he?

A That is correct.

Q Does it not also say, nation-wide?

A It does.

Q As well as overseas?

A I beg your pardon.

Q It says nation-wide plus overseas?

A No, sir. It says agent of Auto Delivery Division of Drivers Exchange, Inc., which, by the way, is the name of the entity which has contracted with us to be our agent. It says, ship your car nationwide overseas.

Q How many different names does your company hold out service for the movement of automobiles within this country?

A Within this country?

Q In the United States.

A Well, that is very difficult. Could you amplify exactly what you mean? Let me give you an example. For example, we may have an agent called John Jones in a given city and he may say John Jones, Agent for AAACON Auto Transport. Is that a separate name? Is that what you mean? We have a whole bunch of A's in that paper we also own. Those are separate names.

Q You say you also own?

A Yes.

Q You advertise under a number of other names such as American International Driveaway?

A No, sir. We advertise under a lot of names, but not such as that one. That is next week.

Q Do you have permission from the Interstate Commerce Commission to trade as any of these names under which you advertise other than the name in which your authority is issued?

A No, sir.

Q Now, Mr. Zola, did your company in the year 1968 experience any claims?

A Yes, sir.

Q And that would be reflected by the fact that on Exhibit 5 you have claims payable of some seven thousand dollars?

A Yes, sir.

Q Will you show me on the statement of earnings where there is reflected any payment of claims in that statement?

A They -- it may very well be included in transportation expense. I don't know really.

Q Again you are unable to tell us?

A That is correct.

Q But you see no other place in which it might appear?

A I'd say not. I'd say not.

Q Mr.Zola, is it not true that there is a memo issued by your home office to all offices of your company in the early portion of the year stating that you had outstanding more than $246,000 in claims against the company from accidents occurred by AAACON?

A That is correct.

Q That would not be reflected by your financial statement?

A Of course not.

Q Of December 31st?

A Of course not.

Q Might that provide the reason why you provided us with a financial statement that is some seven months old?

A Absolutely not.

Q When was Auto Trip USA formed, sir?

A I believe some time last year.

Q You say some time last year?

A Yes.

Q Last year being 1968?

A Yes.

Q But yet you have seen fit to bring us a balance sheet of that company as of July 31st this year?

A Yes, sir.

Q Your company also advertises, does it not, that you have rail service available?

A Yes, sir.

Mr. Kiel: I did not hear the question.

Q That you have rail service available?

A That is correct.

Q Now, sir, can you tell us to what extent your company actually has tariffs, presently effective tariffs, that would permit the provision of such service?

A To the extent we have a provision in our current tariff for operation by substitution of service.

Q From where to where?

A It spells it out in the tariff. I think the tariff is a public record. Probably you could look it up as easily as I can.

Q Is it not a fact that the only tariff provision you have for such service applies from Miami, Florida to Little Ferry, New Jersey?

A The only tariff provision we have?

Q Presently.

A The tariff will have to speak for itself. I really don't know.

Q You don't know whether you have even that much in there, is that correct?

A I know there is a provision in the tariff. Have you got a copy of the tariff?

Mr. Kiel: Yes.

The Witness: Thank you. Referring to our tariff number 25 it says that we may optionally use rail service between Miami, Florida and Boston, Massachusetts, Little Ferry, New Jersey, Philadelphia, Pennsylvania and Washington, D. C. That is the extent to which we have provided for rail service, sir.

Q What item number is that?

A Item 25, original page 8A.

Q That is your MF-ICC number 5, effective when?

A March 21, 1969.

Q Do you have a provision, a supplement, showing an effective date of August 15, 1969?

A A supplement to that?

Q Yes.

A No, sir.

Q Issued July 10th.

Mr. Kiel: This is my copy. It may be a little bit -- the pages may not be all up to date, but upon fast thumbing through it that looks to be the latest. Do you have another page?

Mr. Ross: I have an indication of one.

Mr. Kiel: What was the page number?

Mr. Ross: Issued July --

Mr. Kiel: What page number?

Mr. Ross: Second revised page 14D.

Mr. Kiel: The second revised page 14D has a specific commodity without reference to any method of transport.

Mr. Ross: Right.

Q Can you tell me, if you know, what the material was that was cancelled in Item 10 shown on revised page 14D?

Mr. Kiel: This is my copy. I know where the pages are. Just a moment. I will give you the information. It had nothing to do with this. It related to --

Mr. Ross: M232044, whatever it was.

Mr. Kiel: It related to rates to or from Milwaukee, Wisconsin. Yes. Rates published on first revised page 14D from Milwaukee, Wisconsin to certain states.

Mr. Ross: May I see your copy of your tariff? I only have one page, to see what I am talking about.

Mr. Kiel: Yes.

Q Now, Mr. Zola, to the extent that you now provide so-called rail service available substituted rail service, that is service that is provided at the convenience of the carrier unless the shipper specifies otherwise?

A That is correct.

Q And it, therefore, is done at the same rate as your driveaway?

A That is correct.

Q Whereas your proposal under your freight forwarder application would be providing it at rates which I believe you indicated to Mr. Davis would be substantially higher, in the case of to Miami about twice as high?

A That is exactly correct.

Q And you do now have an effective and specific commodity rate only from Miami, Florida to Little Ferry, New Jersey that does provide a rate very similar to the one you mentioned?

A That is exactly correct.

Q So when you advertise that rail service is available what you actually mean it is available if you see fit to use it yourself?

A That is correct. That is the authority we have.

Q Can a shipper request and get your present rate structure from New York to California?

A No, sir.

Q You would not provide it?

A No, sir, we are not authorized to provide. We have no tariff filed for it.

Q You are not authorized to provide it?

A No, sir.

Q Can you tell me under what theory you contend that you are authorized to provide substituted rail service under your present authority in those instances where you do have a tariff on file?

A I leave that to counsel. I would prefer you asked him about that.

Mr. Ross: I will ask you.

Q Can you tell me where such service is provided? Is it provided in driveaway service?

A Yes, I think it is. I suppose it is.

Q It is providing the driveaway service in the sense that the vehicle moves under its own power?

A No. It is provided in the sense that is the only service we can provide in driveaway service.

Q But you do provide it by means other than driveaway service?

A That is correct.

Q Your authority specified used automobiles, et cetera, in driveway service, in secondary movements?

A Yes.

Q And that and that only?

A Whatever driveaway means. Yes. That is correct.

Mr. Ross: I am not arguing what it means.

Q That is what it states?

A Yes, that is correct.

Q Mr. Zola, you have indicated you have other businesses. Can you give me some idea as to the extent of your time that is devoted to the operation of the applicant's business?

A 95 percent.

Q 95 percent?

A Yes.

Mr. Ross: Thank you, Mr. Zola. I have no further questions.

The Witness: You are very welcome.

Exam. Sutherland: Mr. Ewald.

CROSS-EXAMINATION

Q (By Mr. Ewald) You indicated if the application was granted that you would be using professional drivers as compared to the casual drivers; is that correct?

A Yes. Yes.

Q Does your company intend to hire additional professional drivers?

A I suppose we would have to as and when needed.

Q Do you have any idea how many more you would need to start operations immediately?

A We are ready to start now with what we have on hand, which we will do.

Q Are your company drivers unionized at all?

A No, they are not.

Q I also believe you indicated something along the line you had talked concerning KTTX cars, tri-level cars, to the company. Which company did you have in mind, AAACON or the freight forwarder?

A I suppose, I don't know, that is a good question. I did not have any particular company in mind. I wanted to know how much it cost and then I suppose what we would do would be that the freight forwarder would own the car and lease them to the railroad, which is the usual arrangement, and the railroad would give us a price for the fact that we supplied the cars and moved the vehicles on that basis. That is a very good question. I had not thought of it.

Q Can you tell me how much the cars were?

A Approximately twenty thousand dollars apiece.

Mr. Ewald: That is all I have.

Exam. Sutherland: Before we go any further, I think when Mr. Davis was asking some questions there was some testimony about holding cars. I suppose that would be where you had to accumulate enough cars to make it worthwhile to ship?

The Witness: That is correct.

Exam. Sutherland: Would demurrage enter into that in any way?

The Witness: I don't believe so, and frankly I don't think so because I am not that familiar with the phrase as it applies to this particular operation.

Exam. Sutherland: But it is possible that if you did hold it too long you might have to pay the railroad a certain amount of demurrage; is that right?

The Witness: The railroad did not raise it with us. They were perhaps -- they knew that we had the ability to plan or spot these pick ups so that they told us they did not want them held too long, they did not raise the possibility of charging us a cost for storing the car. As a matter of fact in one railroad we were told there specifically would be no charge unless it was kept too long; it was kept on an open base more or less.

Mr. Kiel: I think what the Examiner had in mind is would you start loading a rail car before you had enough cars to make a shipment or would you hold the cars and wait until you had enough to make a shipment and then order a rail car?

The Witness: That is correct.

Mr. Kiel: What is correct?

The Witness: The second.

Exam. Sutherland: You would not order a car until you had enough?

The Witness: No, sir, just leave it on the side lines. No, sir.

Mr. Kiel: In connection with your advertising in the --

Mr. Ross: Mr. Examiner, before you proceed to redirect examination I would like to point out that I had requested certain underlying documents to be delivered to me after I began my questioning and I would like to reserve the right to look at these as time goes on and then ask Mr. Zola any questions I might have with respect to them if Mr. Kiel agrees. If he does not I have to ask time to examine them now, sir.

Exam. Sutherland: Is that all right with you, Mr. Kiel?

Mr. Kiel: Yes.

REDIRECT EXAMINATION

Q (By Mr. Kiel) I note in connection with one of the advertisements that was referred to in your cross-examination that this General American Shippers carriers a Federal Maritime number 703. Do you have anything to do with that?

A No, sir.

Q Is it a fact that the different advertisements referred to by Mr.Ross show either at the top of the ad or at the bottom of the ad AAACON Auto Transport Inc. and no other carrier's name?

A I'd have to take a look at it.

Q For example, I show you one ad at the top of the page which says AAACON Auto Transport Inc. Ship Your Car. At the top of the ad is the word AAACON?

A Yes.

Q And another ad says, your automobile delivered, and then at the bottom of the ad it says, AAACON?

A Yes.

Q Is it your practice, sir, to advertise and get exposure of your company in as many papers and magazines and so on as possible to reach the public in that manner?

A Well, not magazines, but newspapers and telephone books.

Q Does AAACON Auto Transport conduct operations or represent to the shipper that they are some other company, or that they do business as some other company?

A No, sir.

Q And all the shipping documents and all the papers that are offered to customers contain the name AAACON Auto Transport Inc. whether it is by an office staffed by your own people or by an agent?

A Yes, sir.

Q Carry the same heading?

A Yes, sir.

Q Did you discuss the method of advertising, namely an agent using Joe Jones Division of AAACON Auto Transport with a representative of the Interstate Commerce Commission In New York particularly with respect to that type of a situation?

A I did not personally. No. I know that there was a discussion had and I know that --

Mr. Ross: Objection to everything beyond the word, no. Everything else is not responsive.

Exam. Sutherland: Well, he said no, there was an investigation had.

The Witness: Correction. I said a discussion, not an investigation.

Exam. Sutherland: A discussion?

The Witness: Yes.

Q In fact did the Commission tell you ~~to have your ads~~

placed in that manner?

Mr. Ross: Objection.

Q If you know?

Mr. Ross: He just said he did not have such a discussion. Will you read the last couple of questions so we won't get this record fouled up?

Exam. Sutherland: Yes. Read the last question and answer.

(The record was read by the reporter, as follows:

"Question: Did you discuss the method of advertising, namely an agent using Joe Jones Division of AAACON Auto Transport with a representative of the Interstate Commerce Commission in New York particularly with respect to that type of a situation?

"Answer: I did not personally. No. I know that there was a discussion had and I know that --")

Exam. Sutherland: Is there any necessity to go beyond that?

Mr. Kiel: I don't think so. Actually this was a question brought up by Mr. Ross and so that the air would be cleared I have another official of the company who is here to indicate if you believe it is necessary that the format of Division of, Agent for, was suggested by the local offices for the agency advertising, but unless you think it is material I will not proceed any further with that. I have another witness here who can testify about if if you think it is of any consequence to you.

Exam. Sutherland: What is your reason for bringing this into the picture?

Mr. Kiel: Only because Mr. Ross brought out the method that he found in the telephone directory. Other than that there is no reason for it.

Exam. Sutherland: These agents, Mr. Zola, do you select those yourself?

The Witness: Yes, sir.

Exam. Sutherland: They could be agents for other people as well as you; is that it?

The Witness: No, sir. When they are our agents they are our agents.

Exam. Sutherland: Solely your agents and not agents for any other?

The Witness: That is correct. When you say agents for any one, we have one agent, for example, that is an agent of Bekins Moving & Storage. They handle a different commodity. This New York agent is not an agent but a shipper with a Federal Maritime license, but he is also our agent. We do not select an agent who also ships our commodity by means of another carrier. We will like to have exclusive with respect to our agent on the shipment of our commodity.

Exam. Sutherland: In other words, with respect to the movement of used automobiles you want them as an exclusive agent?

The Witness: We want his efforts exclusively for our company.

Exam. Sutherland: That is what I mean.

The Witness: Yes. That is correct, sir.

Exam. Sutherland: He would not be advertising and accepting shipments for some other carrier in the same business?

The Witness: You are correct, sir.

Q Do you supervise the activities of the agency offices in the same manner that you supervise your employee offices?

A Yes, sir.

Q Do you issue instructions and control their business in the same manner as you do with your employee offices?

A Yes, sir.

Q Now, in your investigation of rail car facilities being available are you satisfied, sir, that if you secure freight forwarder authority that you will be able to secure multi-level rail cars from the railroads?

A Yes, sir.

Mr. Davis: I object. That was gone into on direct.

Exam. Sutherland: I sustain the objection.

Q Should there be a requirement insofar as your business is concerned as a freight forwarder to have rail cars, multi-level rail cars, more readily available are you prepared to either rent them or buy them and put them in your service?

A Yes, sir.

Q With respect to the charge to be assessed by the freight forwarder to the customer, so that the record is clear, will it be a single charge or will it be a number of different charges?

A One single charge.

Q And the payments to the rail carrier which might be used, or to AAACON, or to the loaders, who will pay them?

A The freight forwarder.

Q Now, there was some questions put to you by Mr. Davis with respect to what discussion you had with a representative of certain named carriers, and I ask you, sir, did you make any investigation or have discussion with the Seaboard Coast Line Railroad?

A Yes, sir.

Q Will you give us some information concerning those discussions, sir?

A We had extensive discussions with Mr. Castro, who is their New York marketing manager, and who, after we having given him some time to do the research, he came back to us and said that the rail cars were available on an as needed basis and we would have no problem whatsoever. He said he wanted 3 week's notice on the first rail car and after that he could give them to us as short as a week. Then Mr.

Castro, who is the marketing fellow here in New York for Seaboard, suggested we go and speak to Mr. Gallimore, who is their head man in Miami, which we did, and Mr. Gallimore was extremely helpful and he confirmed what Mr. Castro had said, and he pointed us to some loaders and some yard facilities where we could store our cars in a guarded area pending the accumulation of enough cars to move, and in general I think Seaboard was tremendously helpful and put together the package we needed.

Q Did a representative of Seaboard represent to you that they could assure you or arrange to get your cars in the New York area for movement into the states in the south where they operate?

A Yes,they did.

Q Even though the traffic originated on the Penn Central Railroad?

A Yes, they did. That is correct.

Q Were all of the shipments covered by Exhibit 4, the exhibit in this proceeding, shipments which involved the movement of automobiles in secondary driveaway service?

A Yes, sir.

Mr. Ross: I think technically I should object and move to strike because the witness told me he did not know what driveaway meant.

Exam. Sutherland: Are you?

Mr. Ross: I will move.

Mr. Kiel: Mr. Examiner, we, in an attempt to eliminate this type of question as Mr. Ross asked with regard to the meaning of driveaway when carriers used substituted service, I specifically attempted at the opening of the hearing to give a citation where the Commission found as a matter of law and not as a question of fact that an automobile transporter who has driveaway authority may use substituted service under Plan 1 rail cars, multi-level rail cars. What purpose can be served by arguing the point when as a matter of law the Commission has decided it, I cannot understand.

Mr. Ross: I was not arguing. I merely asked the witness a question so I could argue if I decided to.

Exam. Sutherland: I will leave it on the record, Mr. Ross.

Q In providing a service y ou indicated that Auto Transport would be covered by insurance as required by the Interstate Commerce Commission. Is AAACON presently covered by insurance as required by the Interstate Commerce Commission? In fact, does your insurance exceed the minimum requirements of the Interstate Commerce Commission?

A It does.

Q With respect to the 200 odd thousand dollars in claims referred to, are those covered by insurance?

A The very, very large majority of those claims are fully covered by insurance and do not represent an outstanding business liability or our company.

Q Is that the reason they are not carried on the balance sheet as pending claims?

A That is correct, sir.

Q Would it be an advantage to the entire proposed operation to have the AAACON driveaway service both as to pick up carrier for the freight forwarder and the delivering carrier for the freight forwarder under the common control by the persons who operate the two companies?

A Yes, it would, sir.

Q In what manner would that be an advantage in conducting the service?

A First of all, in a business like ours, which is a personalized business, communication between the shipper and the carrier, and in this case the intermodal element of carriage provided the key to a successful service. If the carriers in all cases are communicating with each other it can unify the operation with regard to the time of delivery at the rail shipment, the time of delivery before rail shipment, and then we have a much finer service and a much more useful service for the public than if we have the problems of separating this and segregating it from different carriers. I don't say it can't be done, but I think it is easier this way and much more convenient for the public this way.

Q If it should develop at this hearing that the client of Mr. Davis, Motor Convoy, does have driveaway service in a portion of the area, namely Florida and parts of Georgia, and if it develops that they have transported automobiles to or from railheads in Florida by truckaway method, as one of their witnesses testified in a recent proceeding, would that meet your requirements?

A No, sir.

Q In Florida?

A No, sir.

Q Or Georgia?

A No, sir.

Mr. Ross: Objection, and I move to strike. I think it would be the shipper's requirements that would have to be met and not the forwarder's requirements.

Exam. Sutherland: What about that?

Mr. Kiel: Well, of course, sir, the success of the forwarder operation is dependent upon its ability to coordinate the different underlying modes of transportation in their function for the public and to the extent it is able to provide a better complete service I think it will succeed in that respect, and, of course, the shippers are the ones that will have to be satisfied with it.

Mr. Davis: Since Mr. Ross has objected, I will object also. I was going to take the man on recross.

Exam. Sutherland: I think you can take it all on recross.

Mr. Davis: I think I will have to point out the premise of the question was fallacious because it said notwithstanding the fact they have authority if the evidence was the only service they performed in the past was truckaway service, but that is fallacious in itself because this man has not been a forwarder to tender us driveaway traffic in the past and has no authority to do so; so we can just argue.

Exam. Sutherland: I think sometimes when these cases do get along in the afternoon we start arguing the case a bit. Do you have any further questions?

Mr. Kiel: I have no other questions. I would like to state the witness for your client did testify in February.

Mr. Davis: I object to going into what a witness testified in another hearing.

Exam. Sutherland: Let's not go into another case.

Mr. Kiel: I have no further questions.

Mr. Hill: No questions.

Mr. Davis: I don't have any questions.

Exam. Sutherland: Mr. Ross, do you have any further questions?

Mr. Ross: Just, well, other than on the documents I reserve the right to examine later.

Exam. Sutherland: All right.

RECROSS-EXAMINATION

Q (By Mr. Ross) Mr. Zola, I believe Mr. Kiel asked you in each case after advertisements in which your company was interested and which had been shown you earlier whether they indicated somewhere on it AAACON. Would you look at the one on page 231, that you and I discussed at some length previously now?

A Yes.

Q Namely, Agent Auto Delivery Division of Drivers Exchange Inc., and tell me if other than the docket number there is any indication of your company's involvement in that?

A I believe your premise is wrong. Mr. Kiel never asked me about that ad. He asked me about the other two. With respect to this ad it does not carry any name at all.

Mr. Ross: Thank you, sir. I have nothing further, Mr. Examiner other than the possibility of some questions on these documents.

Exam. Sutherland: Then if you have some questions on that we can recall the witness.

Mr. Ross: That would be perfectly satisfactory with me.

Exam. Sutherland: Mr. Ewald, do you have any questions?

Mr. Ewald: No.

The Witness: May I make a request with respect to these documents? I will be very happy to answer anything, except the press of business in our office will keep me there after

I am finished with this testimony, and may I request in the event anyone needs to call me again to simply call me on the phone rather than have me sit here and wait.

Mr. Ross: I may not have any questions at all.

Mr. Kiel: Just have patience.

Exam. Sutherland: We have some exhibits.

Mr. Kiel: I was going to move Exhibits 1 through 7 be received in evidence.

Mr. Ross: I object to Exhibit 5 on the ground the witness has shown he is unable to stand cross-examination on the information shown there.

Mr. Kiel: Mr. Examiner, I think that the witness gave sufficient information concerning the document which is identified and showed that it is a true and correct statement of the books and records of account to warrant its admission through the witness' sponsorship.

Exam. Sutherland: Didn't Mr. Ross bring out that the balance sheet for Auto Trip was as at July 31, 1969? Was there any reason why a later balance sheet could not have been submitted for AAACON Auto Transport Inc.?

Mr. Kiel: Mr. Witness, would you answer?

The Witness: Yes. Simply that our accountant has not prepared one later. I can attest to the fact that there's been no material changes, organic changes in the balance sheet from the point at which it was prepared at some time in

March to the present day.

Exam. Sutherland: Taking the exhibits one at a time, is there any objection to Exhibit 1? Is there any objection to Exhibit 1?

(No response.)

Exam. Sutherland: Exhibit 1 is received.

(Applicant's Exhibit No. 1,
Counsel Kiel, was received
in evidence.)

Exam. Sutherland: Is there any objection to Exhibit 2?

(No response.)

Exam. Sutherland: Exhibit 2 is received.

(Applicant's Exhibit No. 2,
Witness Zola, was received
in evidence.)

Exam. Sutherland: Is there any objection to Exhibit 3?

(No response.)

Exam. Sutherland: Exhibit 3 is received.

(Applicant's Exhibit No. 3,
Witness Zola, was received
in evidence.)

Exam. Sutherland: Is there any objection to Exhibit 4?

Mr. Ross: I'd asked or I'd ask you reserve your ruling on Exhibit 4 temporarily.

Exam. Sutherland: All right, or antil you finish.

Mr. Ross: Yes.

Exam. Sutherland: Then you have objected to Exhibit 5. I will receive in evidence Exhibit 5.

(Applicant's Exhibit No. 5,
Witness Zola, was received
in evidence.)

Exam. Sutherland: Is there any objection to Exhibit 6? That is the underlying railroad freight charges. Is there any objection to Exhibit 6?

(No response.)

Exam. Sutherland: Exhibit 6 is received in evidence.

(Applicant's Exhibit No. 6,
Witness Zola, was received
in evidence.)

Exam. Sutherland: Is there any objection to Exhibit 7?

Mr. Ross: I will object to Exhibit 7 for the reason that the witness stated that Auto Trip USA was set up some time in 1968 and yet the investment shown on Exhibit 7 does not reflect it on Exhibit 5. Exhibit 5 is a consolidated statement.

Exam. Sutherland: I did not get that, Mr. Ross.

Mr. Ross: Exhibit 5 purports to set forth the financial position of AAACON as of December 31, 1968. Exhibit 7 indicates a certain investment in what is alleged to be a wholly owned subsidiary. The witness on cross-examination stated that this subsidiary was formed in 1968 but despite that fact the capital surplus and capital stock shown on Exhibit 7 is not reflected on Exhibit 5.

Mr. Kiel: Mr. Examiner, there were no questions asked with respect to the information. The exhibit speaks for itself that as of July 31, 1969 all of the stock was owned by AAACON and the cash in the bank was as is shown. There is no reason this should not be accepted.

The Witness: Your Honor, if I may add something?

Exam. Sutherland: Yes.

The Witness: This AAACON Auto Transport balance sheet is a consolidated balance sheet and would not break out any kind of a subsidiary division of parent - subrelationships. You don't do that on a consolidated balance sheet on a wholly owned subsidiary. This is a strict consolidation.

Mr. Ross: Mr. Examiner, if you assume that is correct it shows a paid in surplus of $6,283.96 on Exhibit 5 and yet Exhibit 7, which is supposed to be incorporated in that shows a capital surplus for eleven thousand dollars.

The Witness: Perfectly consistent even at the time.

Exam. Sutherland: Mr. Ross, on Exhibit 5 you are referring to what item?

Mr. Ross: I refer to the paid in surplus under capital.

Exam. Sutherland: Then you went on from there.

Mr. Ross: Which is less than the amount shown as capital surplus on Exhibit 7.

Mr. Kiel: Do you want to explain that?

The Witness: Sure, if I may. In a consolidation the paid in surplus account is limited to the initial payments in excess of par value of the capital stock of the parent corporation. When you get into the balance sheet of the subsidiary the capital surplus account, which is precisely the same as the paid in surplus account, simply represents that investment by the parent in the subsidiary in excess of the par value of its capital stock. No more, no less, which would not be a capital surplus entry on the consolidated balance sheet or a paid in surplus entry.

Mr. Ross: Mr. Examiner, in some way the investment in the subsidiary is required to be shown on the consolidated balance sheet.

The Witness: No, sir. I respectfully disagree with respect to a wholly owned subsidiary.

Exam. Sutherland: I will receive Exhibit 7 in evidence.

(Applicant's Exhibit No. 7, Witness Zola, was received in evidence.)

Exam. Sutherland: I believe that completes all the exhibits except for Exhibit 4, and after Mr. Ross gets through with his questions on Exhibit 4, if he has any, I will rule on that. At this time shall we let the witness go temporarily and go ahead with someone else?

Mr. Kiel: In view of the hour I did not have any of the witnesses here for this afternoon because we are still not finished, and I did not think it would be proper to bring them in under the circumstances. I will have shipper witnesses starting the first thing in the morning. We have

10, we moved up from 6 to 10 the schedule for tomorrow.

Exam. Sutherland: Mr. Ross, do you have to go through all those to find out?

Mr. Ross: It will only take me another 10 - 15 minutes, Mr. Examiner. Maybe not that long.

Mr. Kiel: May we have a short recess?

Exam. Sutherland: We'd better take a short recess.

(Short recess.)

Exam. Sutherland: Back on the record. All right, Mr. Ross.

RECROSS-EXAMINATION

Q (By Mr. Ross) Mr. Zola, in an off the record discussion I believe you and I agreed, did we not, that the examination of your underlying documents for Exhibit 4 discloses that in each case there is no indication on the underlying document that the vehicle involved was actually delivered to the consignee's location shown thereon?

Mr. Kiel: I am sorry. I did not hear the question.

Exam. Sutherland: Will you read the question?

(The record was read by the reporter, as follows:

"Question: Mr. Zola, in an off the record discussion, I believe you and I agreed, did we not, that the examination of your underlying documents for Exhibit 4 discloses that in each case there is no indication on the underlying document that the vehicle involved was actually delivered to the consignee's location shown thereon?")

A The answer to that question is that the document itself would not so indicate, but the way this business record is kept would so indicate and the procedure that we use would guarantee us that every time we receive one of these the shipment would be made, and I can amplify that if you so desire.

Mr. Ross: Mr. Examiner, I only asked the one question if it was not a fact that the underlying documents do not indicate in any fashion that the vehicle was received at the indicated destination. That is all the questions I have.

Exam. Sutherland: I think he answered the question.

Mr. Kiel: It does not show it.

Mr. Ross: The answer I believe was it does not show it there.

Mr. Kiel: That is correct.

REDIRECT EXAMINATION

Q (By Mr. Kiel) The document in front of you being referred to, is that a document which is maintained in your office as a record of shipments that your company handles?

A Yes.

Q Were those the documents you keep in the regular course of your business?

A Yes.

Q Did you make your Exhibit 4 from those documents?

A Yes. May I also add that the receipt of these documents by our office is itself an indication that the vehicle involved was moved and received in the following manner. The offices that we have are instructed to send us these documents after the car has actually been shipped, at the end of the shipment, they are to send us these documents, and with these documents they send us any applicable insurance fee that is payable as well as any other charges that might be on the particular vehicle so that when we receive this, which is the last part of the 4-part snap-out form, we have a certain assurance that the vehicle has been moved.

Exam. Sutherland: And you have described what that document is in the record, haven't you? Previously you described it?

The Witness: I don't believe so.

Exam. Sutherland: You'd better describe it.

The Witness: This is the last part, the green copy of a 4-part snap-out form or bill of lading which is sent to our office in normal distributing upon the shipment of any given vehicle. We receive the same as a record of that shipment. The freight bill on the shipment is kept in the office of origin as well as the additional parts of the bill of lading which would carry the signature, so that this is our record of the shipment.

Exam. Sutherland: When you say signature, the signature of?

The Witness: Of the consignee.

Exam. Sutherland: Of the consignee?

The Witness: Yes, sir.

Exam. Sutherland: Any further questions?

(No response.)

Exam. Sutherland: Getting back to Exhibit 4 --

Mr. Ross: I have no objection to the receipt of Exhibit 4.

Exam. Sutherland: Exhibit No. 4 is received in evidence.

(Applicant's Exhibit No. 4,
Witness Zola, was received
in evidence.)

Exam. Sutherland: You may be excused.

(Witness excused.)

Exam. Sutherland: I guess at this point we can recess.

Mr. Kiel: May I just go off the record, Mr. Examiner?

Exam. Sutherland: Yes.

(Discussion off the record.)

Exam. Sutherland: Back on the record.

RALPH ZOLA

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Mr. Zola, will you give your full name?

A Ralph Zola.

Q Your address?

A 21 Churchill Road, Englewood Cliffs, New Jersey.

Q I show you Exhibit 2 in evidence and ask you if you are the Ralph Zola who is the vice president of the applicant AAACON and applicant Auto Trip?

A Yes, I am.

Q There was a question asked with regard to the advertisement contained in the yellow pages of the telephone directory which contained your docket number with a name which was dissimilar. Are you familiar with that?

A Yes, I am.

Q Will you explain that situation?

A When Mr. Rapaport, who is the president of Drivers Exchange Inc. first came with us as an agent he placed an advertisement in the yellow pages. That advertisement omitted the fact that he was an agent of our company. This ad was placed without our prior approval or knowledge. We were subsequently in touch with Mr. Assenza of the Interstate Commerce Commission who advised us that in all further advertising both in the yellow pages and the newspapers, which are our common form of advertisements, that the fact that Drivers Exchange Inc. is an agent of our company should be made clear to the public. From the time that Mr. Assenza so advised us to the present time it has always appeared in all other advertising that Drivers Exchange Inc. is the agent of AAACON and our name and MC number are prominently

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displayed in all such advertisements.

Q With respect to the matter of insurance and claims, is that under your jurisdiction?

A Yes, it is.

Q Did you hear Mr. Paul Zola testify as to the reason why said losses which were covered by insurance were not carried as claims payable in the balance sheet?

A I think that the language is important. They are not losses. First of all, they are claims asserted. In the great majority of cases by third parties, not shippers, who may have been insured in the course of the trans-shipment of one of our vehicles. In these cases it is common for a party plaintiff to assert a large claim in his allegation despite the fact that it may actually be a small amount claimed. Additionally, all of these third party claims are covered in full by insurance, which we have with the Aetna Reserve Insurance Company of Chicago and Lloyd's of London, which the amount of any claims in each instance is below the maximum of our insurance, which is three million dollars per accident.

Q This would be the type of instance where a truck might bump into an automobile?

A Yes.

Q Or an automobile into another automobile and there would be liability or property damage?

A That is correct.

Q In connection with your training, sir, are you acquainted with accounting and accounting principles?

A Yes. I have a degree from the Wharton School of Finance & Commerce in Philaddphia in accounting, which I received in 1960, being first in my class in accounting.

Q Do your books and records -- Are your books and records, that is AAACON's books and records, kept in the usual course of business according to accepted bookkeeping and accounting principles?

A Yes, they are.

Q Was the information contained in Exhibit 5 prepared from the books and records according to those principles?

A Yes, it was, sir.

Mr. Kiel: I don't think there is anything else.

Exam. Sutherland: Any questions?

Mr. Ross: Yes.

CROSS-EXAMINATION

Q (By Mr. Ross) Mr. Zola, with reference to Mr. Rapaport, I believe that is his name?

A Yes.

Q Your agent that placed this unauthorized ad.

A Well, he is the president of that company. Whether he himself placed it I don't know.

Q At any rate, it was placed when he became an agent of your company?

A That is correct.

Q Are you familiar with the business that that agent performs on behalf of your company?

A Yes, I am.

Q Will you tell us what percentage of the total shipments handled by that agent involve shipments that have had a prior movement by water?

A None of these shipments handled for us. That is to say, none of the shipments concerned with AAACON Auto Transport Inc. or any driveaway service which Mr. Rapaport may be concerned with have a prior movement by water. His shipments involving water are under another corporation which has no connection with us and to our knowledge he does not at any time perform both a prior overseas shipment to America and a subsequent driveaway service.

Q Do you know of any other company he acts as agent for in the movement of vehicles that have moved into the country via water?

A That question is not clear for the reason that he does not act as an agent for overseas. He is the president and the sole owner of that company, so he only acts as an agent for us as a driveaway.

Q Do you know whether or not -- I believe the company is General American?

A Yes, I believe that is correct.

Q Do you know whether or not that company holds any authority from the Interstate Commerce Commission for the movement of vehicles within this country?

A To the best of my knowledge, and my knowledge is quite good on it, it does not and he does not so move vehicles.

Q He does not?

A No, he does not.

Mr. Ross: Thank you, sir.

Exam. Sutherland: Any further questions?

Mr. Kiel: No.

Exam. Sutherland: You may be excused.

(Witness excused.)

Exam. Sutherland: We will recess until tomorrow morning at the same time, 9:30, in the same hearing room.

(Whereupon, at 4:30 o'clock p.m., a recess was taken until 9:40 o'clock a.m., Tuesday, August 5, 1969.)

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PROCEEDINGS

Exam. Sutherland: Gentlemen, the hearing will come to order, please. Mr. Kiel.

Mr. Kiel: I call Mr. Danor.

ROBERT S. DANOR

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Will you please give us your name and home address?

A Robert S. Danor, 83-20 98th Street, Woodhaven, Queens.

Q By whom are you employed, and in what capacity?

A Alexander's Rent-a-Car, assistant car control manager.

Mr. Kiel: Mr. Examiner, I am calling Mr. Danor for a witness in the Auto USA proceeding. However, in addition we received special delivery in the mail yesterday an appendix by the company to support the AAACON application as well. Mr. Danor, if he is permitted to testify for AAACON, will establish that he made his support known on Thursday and mailed his certification back on that day special delivery to the applicant, which did not arrive, unfortunately, until Monday, and we were here at the hearing yesterday when this came to the applicant's office; so I have the certification here and I have explained the background of it, and I ask permission to call this witness for both applications, and I ~~appreciate the discussion~~

that are supporting the freight forwarder application would walk in here like this witness and have one of these and we could have this all through the hearing where witnesses that are supporting the freight forwarder application, and we don't know who they are, after they get to the hearing, and they have one of these that are supporting the motor carrier application. I tnink that personally in the normal procedure when we start a hearing we ought to have the certifications on the first day of the hearing because this could go on all through the hearing. We could have more of these tomorrow and I believe you indicated, Mr. Kiel, you intended to finish your applicant's case tomorrow.

Mr. Kiel: Yes. Early, if the evidence can be put in as I expect it will be in this type proceeding.

Exam. Sutherland: What witnesses have we here today?

Mr. Kiel: I expect to have 9 or 10 witnesses today. Mr. Zola has a list and we have some of them here now.

Exam. Sutherland: Are these witnesses we already have?

Mr. Kiel: Yes. Certifications. Yes.

Exam. Sutherland: Is this gentleman here the only one we don't have one of these for?

Mr. Kiel: Yes.

Exam. Sutherland: I will permit him to testify. Mr. Danor, you said 83-20 98th Street?

The Witness; Yes. Woodhaven,Queens.

Exam. Sutherland: Woodhaven?

The Witness: Yes.

Exam. Sutherland: What is your position again?

The Witness: Assistant Car Control Manager.

Exam. Sutherland: All right.

Q At what location do you perform your services for the company?

A At the Rego Park branch, which is Horace Harding Boulevard.

Q In your duties do you have responsibility for securing transportation for automobiles?

A Yes, I do.

Q What is the business of Alexander's Rent-A-Car?

A They rent automobiles.

Q At what locations does the company maintain facilities?

A We have approximately 14 branches in the New York Metropolitan area. We are in Philadelphia and are in Boston.

Q Other than in New York City proper, the five boroughs in New York, at what locations in New York do you have offices which are in the so-called Metropolitan area?

A Well, Paramus.

Q That is New Jersey?

A Yes. White Plains.

Q Are the balance in New York State?

A Right. Excuse me. We also have three in Philadelphia and two in Boston locations.

Q What is the number of automobiles that Alexander Rent-A-Car leases to customers?

A Throughout the whole fleet it would be --

Mr. Ross: I will object to these questions until it has first been established that this witness speaks for the entire operation as contrasted as I understand it he performs his duties in what is known as the Rego Park branch.

Exam. Sutherland: Maybe you could qualify him.

Q Mr. Danor, do you as Assistant Car Control Manager have jurisdiction over the movement of automobiles at the local branches and Philadelphia and Boston branches or only at Rego Park?

A No. This is car control for the whole company in every single branch, each one that is moved we know about it. We have car control inventory and everything goes out of Rego Park.

Exam. Sutherland: Was his answer completely responsive?

Q Would you then have jurisdiction over all the branches and all the cars?

A Yes, I would.

Q At what type of location does your company maintain rental offices?

A Could you rephrase that?

Q At what type of locations? Would it be stores, airports, or what?

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A Three or four right in the stores proper and some are garages that are away from the stores.

Q Is there a department store chain called Alexander?

A Yes, there is, and we are a division of Alexander's Department Stores.

Q At what other type locations do you have rental offices?

A Garages, private property where Alexander's does not own, which we lease from the private landlord.

Q Do you have any at airports?

A Yes, we do, one at Kennedy, right off the airport, and one at Logan Airport, Boston, and one at LaGuardia, and one at the Philadelphia akrport.

Q Does your company long term, short term or both?

A We also -- both. We also have a division which is Compass Leasing, which is long term also.

Q Is that under your jurisdiction?

A No.

Q So you are just talking about Alexander's Rent-A-Car?

A Right.

Q Have you any experience in doing business with AAACON?

A Yes, I do.

Q Have you been advised as to the extent of the application of AAACON and its subsidiary Auto Trip?

A Yes, I have.

Q How often does your company use AAACON at the present time?

A Well, it is hard -- it is pretty frequent. We don't use them until we need them.

Q In the course of a year how often would that occur?

A Maybe 100 times, 200 times, 300 times.

Mr. Ross: I submit that answer is not responsive, maybe 100 to 300 times. I don't think the answer is responsive.

Q Will you explain your answer?

A If everybody was honest and everyone a careful driver we would never have to use them. People steal our cars, and our cars break down out of state and we have to use AAACON to get the cars babk.

Q Does that vary month to month?

A Yes, it does. In the summer time it is more than the winter time because we rent more cars.

Q Between what areas do you support Auto Trip for freight forwarder authority?

A Every state in the Union plus Alaska and even, I don't know if we could, Canada, and probably even Mexico if you people -- to get our cars back.

Q Have you ever used AAACON to or from the Province of Quebec or Toronto in Canada?

A No, we have not.

Q In that respect would you explain the circumstances under which you have usdd AAACON? Give us some examples of points between which they moved cars for you and explain the circumstances that caused this movement to come about.

A Right. Number 1, we have some of the nicest people renting our cars and they get arrested and it seems it is never in New York. It is Los Angeles, Nebraska, Wyoming, all over the country, and we have to get our cars back and put them back on the streets.

Q Where do the cars come back to?

A It is either New York or any one of our other branches. Now, there is another circumstance we have.

Q That is one situation.

A Yes. Another one is we lease cars from Chrysler Leasing, and also Ford and General Motors. If it is the end of the lease, 6 months or over you want to return the car to wherever there is a Chrysler depot. If the car is in California we want to return it there. If in Nebraska to the closest one, or Detroit, or any other place to return it back to Chrysler Leasing.

Q Is it your statement then that the car might be anywhere in the United States atthe end of the leasing period?

A Yes.

Q And then you return it to the manufacturer's depot?

A Yes.

Q Do you ever have situations where cars are being rented and are used or driven to points in the United States and for some reason there is a mechanical failure?

A Yes.

Q Or an accident?

A Right, and the main reason we want to get your people, we are supporting your people for the rights for one reason is we have a car that wraps up in the Midwest, or any place, and we are at the vendor's mercy. He fixes the car and gives us his price. We are insured with All State. We get the car back and still use AAACON to get it back and then return it to either Ford, Chrysler or General Motors, and they don't like the job and they charge us for rework. We can't drive the car back to New Hampshire or any other state and tell them to fix the car. If I can get the car back here I can have it fixed in New York and if I don't like it I can have it back in the body shop and fixed by them, and this is me. It might cost us almost one thousand dollars or two thousand dollars.

Q Would there be any advantage if the car did not have to be driven all the way from wherever it was where it broke down or was in an accident?

A Right. Let me say that the local body shop, if I could have the local body shop put the car together so I can get it to the railhead, to have your people drive it, and fix it in New York, and to have the car off the rodd. Another thing the car might have nothing wrong with it and might drive into a tree. Anything might happen.

Q Is it your statement you would prefer the freight forwarder service involving the use of railroads or motor truck transporters?

A Absolutely.

Q Have you been advised that the cost of this service will be --

Mr. Ross: I am going to object to the extremely leading nature of all these questions, especially this one.

Mr. Kiel: Strike that.

Q What have you been advised with respect to the cost of freight forwarder service as compared to the driveaway service?

A It will be higher.

Q Will your company use it under those circumstances?

A Yes.

Q Why?

A For the last example I gave you. If I can put the car on a train or truck it gets here much faster and I would not have to worry about people driving the car.

Q Has anybody else ever offered you that type of service?

A Yes, they did.

Q Who is that?

A I think, I am not sure, but the name was East Coast Drive-a-Car on repossession. They found one of our cars; and since they found it they wanted to drive it back and we had a lot of trouble. It took us 4 months to get it back from Louisiana.

Q This was driveaway service?

A Yes.

Q Has anybody offered you a freight forwarder service where they will take the cars on railroad trains?

A Yes, not railroad trains. On trucks. We have most of our cars, our Chrysler cars, our Pontiacs, are delivered through New York, and we had to drive or deliver 75 Pontiacs from here to Boston and we had them by truck and I did not like the way it was handled or done.

Q You are aware that this is a transportation service for individual cars?

A Yes.

Q That is what you are supporting this authority for?

A Absolutely.

Exam. Sutherland: These are all used cars?

The Witness: No. No. When we get them they are brand new. We don't keep our cars more than 6 months.

Q They are cars which you are not the owner of?

A We are responsible.

Q You are responsible for?

A Yes.

Q And they pass through a dealer before they get to you?

A Right.

Q Is time in transit important?

A Yes, it is.

Q Why?

A Because it is money. The sooner we have our car back the sooner we get it back on the street and the sooner we make money on it because Chrysler charges us whether we use the car or not.

Q If Auto Trip is contacted, who would contact them in your company?

A I would.

Q Would it be an advantage to you to be able to contact their various offices located throughout the United States?

A Yes, it would.

Q If this application for freight forwarder authority is granted how frequently will you use it as compared to your use of the driveaway service?

A That is a hard question to say. Well, I will tell you. Let me phrase it this way. At the end of our 6 months, say with Pontiac, we return all our cars to New York. If I could call you people up and send 50 cars down in one train, or even one at a time, because we have to get it to New York.

Q That would be one instance?

A Right.

Q How about ones where there are breakdowns, where people are arrested who are in possession of your car, or where there is a mechanical thing or there is an accident, how often do you expect to have that situation?

A Right now I must have 10 to 15 cars, and a warranty all over the country, and we have to get them all back.

Exam. Sutherland: 10 cars and what?

The Witness: The warranty. In other words, they are in the shop for some reason or another, mechanical breakdowns.

Q Has your company been increasing the size of its fleet?

A Yes, sir.

Q What is its relationship at present as compared to last year?

A Well, right now we are probably running 500 to 600 cars more than last summer.

Q Do you have any information concerning what your company proposes to do in the future in connection with the size of its fleet?

A Each summer it is planned to open more offices as business gets better. You must make your move in the summer time.

Q In that respect, sir, will you tell us what your experience has been as the size of your fleet increases as to the need for the use of service such as proposed by Auto Trip?

A Well, of course, the more cars we have the more problems you will have. You will have more breakdowns and more collisions.

Q Has that been your experience?

A Yes, sir.

Q When you have used the services and facilities of AAACON how have you found them to be?

A Very good. Very reliable.

Q If this freight forwarder application is approved would you use that service?

A Yes, I would.

Q And would it be an advantage to you if AAACON were the carrier who picked up and delivered for you?

A Yes, it would.

Mr. Kiel: I have nothing further.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Danor, you indicated that you have done business with AAACON Auto Transport in the past?

A Yes, I did.

Q Do you have with you any records of your company that would indicate the extent to which you used that service?

A No, I don't have it.

Q In testifying that you have used them 100 or more times a year, that is your estimate based on your own knowledge without any records, is that right, sir?

A Right.

Q When you have used AAACON Auto Transport in the past it has always been a driveaway service, is that correct?

A Yes.

Q And they have driven cars back for you under circumstances you have stated when the people who leased those cars have been arrested and you needed to get the cars back?

A And breakdowns and collisions, and they were fixed, and we had to get the cars back. Right.

Q After these mechanical breakdowns and so forth they have driven them back for you?

A Yes, sir.

Q Have they driven the cars and have returned them to one of the companies such as Chrysler Leasing?

A Yes.

Q They have done that, too?

A Yes.

Q You say their service has been satisfactory?

A Yes, sir.

Q How many cars do you expect to tender to the applicant forwarder company when you expect to utilize the forwarder service?

A You have to wait until what happens to know if you will have to use them. You hope you never have to use them. I hope my cars never crack up, or break down, but it is a mechanical object, you know.

Q In other words, if you had a car break down some place out in the middle of Missouri would you expect to use the forwarder service for that?

A I would. Yes.

Q Has the applicant told you that that service would be available to you?

A Well, the mail that I have got from the I.C.C. said they would, they would be.

Q The I.C.C.?

A The mail I got.

Exam. Sutherland: You are referring to the appendix up here?

The Witness: Yes. To the questionnaire.

Q In other words, you understand that the applicant is seeking to provide that service; is that right?

A Yes, sir.

Exam. Sutherland: Mr. Hill, since he's referred to this, it says on here "automobiles," and something is written after that. "Automobiles and Vans All parts of the United States to N. Y., Mass., Penn. or any point in the U.S. where we can return autos to Chrysler Leasing Corp, Ford or G.M."

Mr. Kiel: Mr. Examiner, if I might make a note the witness said he received some papers with that form and I believe that is what he is referring to about the tender of service proposed rather than the form.

The Witness: That is right.

Exam. Sutherland: Who sent that to him?

Mr. Kiel: The applicant sent him that together with a memorandum as to the service we proposed to provide and the areas it would be provided, and I think that is the areas the witness was referring to.

The Witness: Yes, sir.

Mr. Ross: Might we have that document for examination to see what was proposed?

Exam. Sutherland: Yes, Mr. Hill has it.

Mr. Ross: I mean the letter, the memorandum.

Mr. Kiel: No. This is internal papers that you have no right to see. This is a private communication.

Mr. Ross: I just asked if you would.

Mr. Kiel: No, I won't.

Mr. Ross: I will ask the witness.

Q Mr. Danor, did you fill out this certification yourself?

A Yes, sir.

Q When you wrote in automobiles and vans what did you mean by vans?

A Well, we have 50 vans, Dodge vans, a sort of closed pick up truck. It is a Dodge A100.

Q Did the applicant indicate to you they would transport these trucks for you, too?

A No. I just put that down because it is part of our fleet, I mean the whole fleet.

Q You wrote it in the certification as to the service you wanted; is that right?

A Yes.

Q Did the applicant indicate to you it would transport trucks for you?

A It said our fleet.

Q They said they would handle your whole fleet?

A Yes. These trucks are no larger than a car, by the way. They are vans.

Q Regardless of the size it is a pick up type truck, isn't it, sir?

A Yes.

Q Has the applicant AAACON Auto Transport been handling these pick up trucks for you in a driveaway service as well as automobiles in the past?

Mr. Kiel: I object to the characterization of the vehicle. It is not a pick up truck.

The Witness: It is a van.

Exam.Sutherland: Are you objecting?

Mr. Kiel: Yes, I am.

Exam. Sutherland: I will overrule the objection.

Q My question, Mr. Danor, is has AAACON Auto Transport in the past in a driveaway service handled these vans, I will call them vans if you want, for you along with automobiles?

A So far I don't think one of them broke down out of state, or was stolen, or was in a collision.

Q They have not handled?

A So far there was no reason, but if one did we would definitely call them up to bring it back.

Q They have held out that they would provide that service for you if you needed it, is that right, AAACON Auto Transport?

A Let me say this, so far one did not break down, so the occasion did not come up; but I am sure they would.

Q Have you ever received a driveaway service from AAACON Auto Transport involving an automobile that went either from the New York City area to Florida or from Florida to the New York City area?

A We have had one from Florida to New York but not New York to Florida.

Q You have had one from Florida to New York?

A Let's say it was Florida, I will say Louisiana because that is the one I know they had one there.

Q You have never had any from Florida?

A Not to my knowledge, but I am sure there was one because they are not prejudiced, they break down all over.

Exam. Sutherland: They are not what?

The Witness: They are not prejudiced, they break down all over.

Q Do you remember how long it took AAACON Auto Transport to get your car from Louisiana to New York?

A We called them one day, we must have had it two days later.

Q You had the car two days later?

A Yes.

Q Did they indicate for you how long it would take you to get that car if it were handled in a freight forwarder service utilizing a rail as a line haul carrier?

A No, they did not.

Q Suppose it took them 9 to 10 days for the forwarder service as compared to the 2 days using AAACON Auto Transport, which would you rather have?

A I'd rather have it by train.

Q Even though it took that much longer?

A Yes.

Q Why, did something happen to the car when it was driven back by AAACON?

A No, but what happens if something did? This way it goes on the train.

Q You feel there is no chance of any damage when they are handled on trains, is that right?

A Someone could throw a rock through the window when it is on a train, but there would be less damage than when driven, less hazardous.

Q You indicated in one case you had 75 Pontiacs you moved from New York City to Boston?

A Yes.

Q Was that to your company branch in Boston?

A Yes, sir.

Q Was that handled by a truckaway service?

A Yes, sir.

Q When does that happen, when you get a new bunch of cars in every 6 months; is that the situation?

A Business got very good and they needed the cars and we shipped them right up.

Q Did you ever try to get rail service for that?

A No.

Q You indicated in your testimony that you were going to have 50 cars you could ship by rail. From what origin point were you talking about?

(No response.)

Q I think you said you hoped to have and that is when there would be as many as 50 cars you want shipped by rail?

A Yes.

Q Where?

A Around Philadelphia or Boston, to New York, where we have the return of the cars, and they give us two days because if we keep it over a certain day we have to pay for another month then.

Q It would be either between Boston or Philadelphia to New

York?

A Right, for such a large number of automobiles.

Q You have had such movements in the past?

A But not by train or truck. AAACON drove them one at a time.

Q Have you ever asked or inquired of the railroads whether such a service is available?

A No.

Q So you have no idea?

A I personally had a little problem with the railroads, not through Alexander's Rent-a-Car, through Discount Renting, who is no longer in business. We had a customer.

Exam. Sutherland: Do you want this?

Mr. Hill: I don't care.

Exam. Sutherland: It looks like we are getting into some other company.

Mr. Kiel: Next question.

Q At any rate in spite of that you are still interested in rail service?

A Yes, sir.

Mr. Hill: I have nothing further. Thank you.

Exam. Sutherland: Mr. DAvis.

CROSS-EXAMINATION

Q (By Mr. Davis) Mr. Danor, what is your problem with rail service?

service?

Mr. Kiel: I object. Mr. Davis' interest is solely with respect of the pick up and delivery portion of the authority of AAACON, and I object to his discussion with respect to the overhead service.

Mr. Davis: Well, Mr. Examiner, this is all one integrated service. If the Examiner please, he cannot pick up and deliver unless he can move it over the road as a freight forwarder under the proposal; so you can't split this.

Exam.Sutherland: I will overrule the objection. You can answer.

A The customer broke down with his car and he contracted with the railroad themselves and they put it in a box car and they charged us for the whole box car and we had to sue the railroad. This was handled by the customer and the railroad, not with us. He had no right to do it and the car was like three months tied up.

Q You understand, don't you, that the proposal here is to operate on a volume basis. In other words, you have to have a rail car load in order to take advantage of the carload rate, you understand that, don't you?

Mr. Kiel: This is not the witness' problem, and I object to that type of question. It is not a fair question.

Exam.Sutherland: I think this witness is intelligent. I think he can answer that. I will overrule the objection.

A There isn't any problem.

Q Can you give us any general estimate as to how much your cars rent for a day?

A Well, we have three or four different classes. They may start from $7 a day and 10 cents a mile and go up to $16 a day and 16 cents a mile. We have a combination, Falcons, Imperials and Continentals.

Q Can you tell us on the average what you make per day on the average car on over-all?

Mr. Kiel: I object. I don't think that is anybody's business what a company that is supporting an application before the Interstate Commerce Commission makes as a profit.

Mr. Davis: I am not asking for the profit.

Mr. Kiel: You certainly are.

Exam. Sutherland: Mr. Davis, maybe you can explain a little more just what you are driving at here.

Mr. Davis: If your Honor please, as you well know once you do that the purpose of the question is defeated.

Exam. Sutherland: Are you talking about the entire business or one specific car? I will sustain the objection. You make your question a little more specific.

Q In your over-all operations, sir, what is the average revenue from daily rental of automobiles? Will it average out $20 a day, or what?

A It is a hard thing to say because sometimes you work on a mileage and sometimes a flat rate, and some person might go 500 miles a day, and another person around the block.

Q Can you, being familiar with the business, give us any kind of an average, sir, between low and high?

A It would not be fair if I did it. I have nothing to do with the rates. The only time I rent cars is when it is an emergency, someone is sick or dying, and I go at it.

Q You have told us transit time is important to you because you have to get the car back to get it rented because that is the way you make money; is that right?

A Yes, sir.

Q But then you said that you would rather have your car in transit on a rail car or under this forwarding service 9 or 10 days rather than two days. How much would you lose over a seven day period?

A That is not the reason I said that. I said if the car comes back and it gets wrapped up it will cost me $300.

Q So, in other words, if a car were not wrapped up, and I assume what you mean is wrecked in some way?

A Yes. Wrecked.

Q As long as the car is driven in two days to you without that then you would prefer the faster transit time so you could get it back and rent it?

A Yes and no. I'd still rather have it moved on the train because I have no problems.

Q Have you had problems with AAACON in driveaway service in the past?

A Most of the problems are like the guy had to stop to buy tires, something happens with the car mechanically, we had one car did not even make it out of the State of North Carolina, did not go 50 miles, and had to go for a warranty again.

Q Has this been frequent while AAACON has been driving your car that you have had problems like this?

A No.

Q It has been infrequent?

A Yes.'

Q I believe you said over all their service has been good?

A Very good.

Q Under those circumstances, as I said before, that is only where you do have damage of some type that you would prefer the longer transit time; is that correct?

Mr. Kiel: If your Honor please, I object. That question has been asked and answered. The witness has answered at least three times, and I object to it. It is redundant.

Exam. Sutherland: I will overrule the objection.

The Witness: Give me the question again.

Mr. Davis: Mr. Reporter, could you read it?

Exam. Sutherland: Read the question.

(The record was read by the reporter, as follows:

"Question: Under those circumstances, as I said before, that is only where you do have damage of some type that you would prefer the longer transit time; is that correct?")

A Well, I still say if it goes by train it will be safer. I know it will get where it is going. There is no outside problems because usually trains go through and you don't have to worry about rain, snow or sleet.

Q When is the last time you moved a car by rail?

A Not with Alexander's Rent-a-Car.

Q So you have had no experience at all moving cars with Alexander's in rail service?

A Right, sir.

Exam. Sutherland: There was one mentioned here about a box car.

The Witness: That was a different one. That was not Alexander's Rent-a-Car.

Q That is not the one where you had the problem with the rate?

A Yes.

Q That is your only experience, is that right?

A Yes, the only time I used rail.

Q Now, I believe you stated that you have used AAACON to move your cars from various points back to certain dealers?

Mr. Kiel: If your Honor please, I submit that is improper. The witness did not say that. This is not proper cross-examination because the witness did not say delers at all.

Mr. Ross: If the witness did not say it he can say he did not say it.

Mr. Davis: Practitioner should be admonished not to try to put an answer in the witness' mouth. He has been doing that continually throughout this hearing. That is highly improper. If he wants to make a legal objection and state the grounds for it, that is fine, but to start arguing what the witness has said or has not said is improper.

Exam.Sutherland: Let's stop the arguing back and forth, and we will get an answer to the question. I overrule the objection.

A Most of the time the car is delivered to our agents. The only time it would deliver it to a dealer it is delivered to Chrysler -- that is not a dealer. That is the leasing company, but 99 percent of the time it is delivered back to us at our locations.

Q Do you not lease cars on long term basis through dealers?

A No.

Q You always get it from the manufacturer?

A No, I am sorry. Through the dealer. Right.

Q When you have those cars returned does it not return to the dealer?

A No, sir. General Motors is not allowed to lease us the car. They have to go through a dealer.

Q But doesn't it go back through the dealer when you relinquish it?

A No. General Motors tells us where they want us to bring the car back.

Q Do they ever designate dealers?

A No, sir.

Q You mean you have the car returned back to a manufacturing facility?

Mr. Kiel: If your Honor please, I object. It is redundant. Counsel has been at this for 10 questions and he keeps getting the same answer.

Exam. Sutherland: Objection overruled.

Mr. Davis: I have not asked that question.

Exam. Sutherland: Answer.

A The Chryslers go back to Carteret, New Jersey, and General Motors products, the Pontiacs go to Midtown Pontiac, which General Motors own, which is a lot General Motors has on the West Side.

Q Midtown Pontiac would be a dealer?

A It says a garage. There is no Midtown Pontiac. It is just a Pontiac garage. Anybody could own the garage. It is a location.

Q Pardon?

A It is a garage location.

Exam. Sutherland: When they go to these other points do you pay their transportation charges, or what?

The Witness: When we bring the cars back to to us that is a movement which we handle, we bring the cars from one place to another. We pay for that.

Exam. Sutherland: You pay for the transportation?

The Witness: Right.

Q When General Motors tells you what to do with the car they pay the freight?

A No, sir.

Q They do not?

A We have to return it to where they tell us to return it.

Q As I understand it, most of your cars will be moving from a point in the United States back to New York; is that correct?

A Yes, sir.

Q Are you familiar with the services of the Motor Convoy, Inc.?

A No, sir.

Q By the way, have you ever actually asked any carrier to provide a truckaway service for you over the rodd from any point in the southeast back to any point?

A Well, we had these 50 or 75 cars driven up to Boston with cars on through.

Q From where?

A From New York City, our location, to our location in Boston.

Mr. Davis: If you will listen to my question we will get along a lot faster.

Q Have you ever had occasion to ask any carrier to provide a truckaway service from any point in the southeast?

(No response.)

Q Do you know generally what the southeast is?

A Yes.

Q Back to New York or any other point?

A No.

Q Have you ever had a volume movement from the southeast?

A No, sir.

Q To any point in the United States?

A No.

Q Do you know of any volume movement that you are going to have?

A No, sir.

Q Sir?

A No, sir.

Q If I finished my question it would have been from the southeast.

A I still say, no, sir.

Q If Motor Convoy can provide you with a truckaway or driveaway service from any point in the southeast to any rail service or consolidation point of any kind do you have any reason why you would not want to use that service if the applicant got its forwarding rights?

A We don't have to move volume cars from the southeast any place.

Q So you really are not interested in the southeast?

A Right. Unless it is one car, not volume, no.

Q One car at a time and that would move by driveaway and they already hold that authority?

A What if they get the authority to move by train, we would move it by train.

Q What I am asking you is on the driveaway portion of that movement, getting it from the origin point to the consolidation point, where it will go into rail service or truckaway service, or whatever it might be. In other words, where the consolidation point would be and move the volume over the line haul movement you would have no reason why you could not use Motor Convoy to drive the same single car away to the consolidation point, do you? You don't know of any reason?

A Well, I don't know if I am answering the question right or not. I would want one person to handle the whole thing, which would be AAACON. I would not want to deal with six or seven different subcontractors. I know my car is going, They are responsible. That is it.

Q If you could deal with USA Auto Trip or whatever the forwarding company is, if you could deal with that company alone that would meet your needs?

A Yes.

Q Regardless of who performed the pick up and delivery?

A Right, but we would still only want to use AAACON or USA, whichever company.

Q Are you aware that AAACON now could provide a pick up service for you in the southeast?

A Yes.

Q And take it to a consolidation point and move it by rail as a forwarder company to New York, for example?

Mr. Kiel: I object. This is the same type thing. If we had this authority to be a freight forwarder we would not be here.

Exam.Sutherland: Will you read the last question?

(The record was read by the reporter, as follows:

"Question: Are you aware that AAACON now could provide a pick up service for you in the southeast?

"Answer: Yes.

"Question: And take it to a consolidation point and move it by rail as a forwarder company to New York, for example?")

Exam.Sutherland: Did you intend that?

Mr. Davis: I will amend that.

Q Are you aware of the fact that they can drive the car away now from an origin point in the southeast to a consolidation point in driveaway service?

A They could drive the car wherever they want if I tell them they could do it.

Q If they got forwarder rights here today they could still provide the pick up service for you, you understand that?

A Yes, and delivery service.

Q You think they can perform the delivery service?

A Right after it comes off the train to come to us. If they could pick it up and drive it then I would assume they could take it off and bring it to us.

Q Are you familiar with their authority?

A Right now?

Q Yes.

A I guess I am.

Mr. Davis: I believe that is all. Thank you.

Exam. Sutherland: Mr. Sack.

CROSS-EXAMINATION

Q (By Mr. Sack) Mr. Danor, as I understand it you would only have need for rail movement of automobiles back to one your branches in New York, Philadelphia or Boston or returning leased automobiles to manufacturers at either your or one of your New York City facilities, or Carteret, New Jersey, or General Motors in New York City.

A Or if the car is in the southwest and the lease is over we can deliver to one of their places closest to where the car is. Chrysler has stockades all over the United States.

Q Would you consider utilizing rail service on that type of movement of a car you just mentioned?

A Yes, sir.

Q Do any of the manufacturers from whom you lease automobiles have depots for the return of those automobiles located in the States of Georgia or Florida, to your knowledge?

A This I don't know, sir.

Q Have you ever had occasion to ship automobiles to the states of Georgia or Florida?

A No, sir.

Q Do you contemplate that?

A If business gets good, if it gets better we will be in every state in the Union, this is hopefully, including Georgia and Florida.

Q This is not in the foreseeable future?

A I am just a worker.

Mr. Sack: That is all I have.

CROSS-EXAMINATION

Q (By Mr. Ross) How long have you been with your present employer?

A From February 2, 1968 until the present.

Q A little over a year?

A 18 months.

Q Approximately a year and a half?

A Yes, sir.

Q In this period of time can you tell me to what depots, as you call them, you have been requested by either Chrysler, Ford or General Motors to deliver these cars when the leases expired?

A They request us to bring all the cars to New York. We have to ask permission to return it to whichever state we want, which they say is all right.

Q To what points have you delivered?

A California.

Q California is not a point, sir.

A The west.

Q Geographical point?

A The west, the midwest.

Q No. A point like New York City.

A How about Los Angeles? Is that a good point?

Q That is a point.

A Detroit. There is a few others which I don't know, offhand, right now.

Q I am asking you for your own knowledge, and you give me Los Angeles and Detroit?

A Yes.

Q If there are others you don't recall them?

A Right.

Q That is the situation?

A Right, sir.

Q So in this year and a half the only possible need you have had to move vehicles is to Los Angeles, Detroit and New York City, and I believe you said Midtown Pontiac is the actual location?

A It would be the West Side of New York.

Q And Carteret, New Jersey?

A Carteret.

Q And the Fords?

A They are picked up at our own facility in the Rego Park Branch.

Q The Fords are picked up at your own facility in the Rego Park branch?

A Yes. There may be more I don't remember, I don't remember them right now, that I personally handled.

Q As you sit there on the witness stand you don't know of any other points?

A I don't remember any other point.

Q Do you know of any other? If you do let me know, tell me.

A Right now I don't remember any more.

Q Those are the only ones you know about?

A Those are the only ones I remember. I might have used others.

Q You cannot give me any other points?

A Not right now. No, sir.

Q You stated you had been advised of the scope of the application?

A Yes, sir.

Q You understand there are two applications in this proceeding?

A Yes, sir.

Q Can youtell me just what you understand the scope of the motor carrier application to be?

A Offhand, I only looked at it twice. I could not tell you verbatim. They wanted to pick up cars, if this is what you want to know, and bring them to the railroad, take them off the railroad and bring them to us.

Q Do you understand -- just what service have you been promised by the applicant?

A Good reliable service.

Q What do you mean by good reliable service?

A I will call them up and I know I will have my car where I want it in the same condition they pick it up, the same tires, the same engine, the same car.

Q You have indicated on at least one occasion you want a Georgia and Florida move back to the New York City area?

A Yes.

Q What service do you expect to receive from this applicant on such a movement if this authority that they are seeking is granted?

A I would give them a call, and they would pick up a car from where it is, drive it to the nearest railroad siding, or do what they have to do to get it on a train, and take it to New York and bring it to us.

Q Have you been given any assurance, promise or statement as to how long that movement might require?

A No, sir.

Q You have no idea?

A No, sir.

Q Whether it be one week, two weeks or six months?

A If it is six months we are all in trouble. If it takes the train that long to go that far we will put them or ship them by airplane, you know.

Q Do you understand that the applicant proposes to hold vehicles tendered by shippers such as yourself to them until such time as they assemble or accumulate a complete carload or truckload as the case may be?

A This, like I said, is not my problem. It is hard to answer.

Q It may not be your problem, but do you understand that is a part of their proposal?

A Yes, sir.

Q Do you?

A Yes, sir.

Q Do you have any idea as to how long that might require?

A No, sir.

Q You don't know whether it might be six months, six weeks or one week?

A Sir, what I usually do after one week or two weeks, I give them a call and if he tells me he could not do it I'd ask him to drive it up.

Q When you tender a vehicle would you at that time tell the applicant you have to have it by a certain date?

A I could not do that. I'd like it in a certain period of time, which would be a month, if that would be.

Q A month normally?

A Yes.

Q Why do you normally have a month?

A Well, if we don't have to turn it, the car in, unless we need the car right away -- we want to get it back, really.

Q Aren't you losing potential revenue every time this car remains, every day that car remains?

A Yes, but if we drive it up and ram it into a tree we would lose it even more.

Q I believe you stated you had occasion to use Auto Drive Triple AAACON on some 100 moves per year.

A Yes, sir.

Q In the last year and a half how many instances have you had where a movement of a vehicle being transported by AAACON hit a tree, or, as you put it, got wrapped up?

A Twice.

Q Twice in a year and a half?

A Right.

Q How many day's delay did that cause you?

A It was not an accident. It was warranty. One was a blow out one day and they had to buy new tires and the other time an engine.

Q What do you mean by warranty?

A The car goes in for mechanical breakdown, which the manufacturer has to pay for it.

Q You mean the car is under warranty and you have to obtain service from a dealer or Pontiac as the case may be?

A Yes.

Q In case of a blow out you don't contend or mean to say that the manufacturer --

A Not a blow out.

Q --is liable for that?

A No, sir.

Q So in this year and a half you have had two instances?

A Two that I remember right now.

Q I will be happy to stay here until you can refresh your memory. Do you have any others?

A I will say, no.

Q You say no. Is that the fact?

A I'd have to go back and look at the paper to make sure.

Q You don't recall any other?

A Right, sir.

Q You did know you were coming here today to appear in this proceeding in behalf of this applicant?

A Yes, sir.

Q Do you understand that the applicant proposes to transport vehicles considerable distances from the point of pick up in some cases to what you have referred to as a railhead?

A Yes, sir.

Q And that it is not to the nearest railhead. By that meaning a rail shipping point.

A Right, sir.

Q Do you understand this may be several hundred miles?

A Right. It is still closer than driving across country to us.

Q Perhaps. You say it is closer?

A Yes, closer.

Q Closer in point of geographical distance and not time?

A Right.

Q But you understand you would under those conditions have an element of exposure to the hazards of the road as well as would be a decision. If it is a warranty car if we could call AAACON and get it right back we would use AAACON.

Q I am confused. You say if it is a warranty car.

A A warranty car is where it is a mechanical breakdown rather than a collision.

Q In other words, you are using the words warranty car in a situation where whatever the problem is was caused by a defect that the manufacturer is responsible for?

A Right, or it may be spark plugs or something where it is not a collision.

Q To answer my question then I gather you have not had any experience in the movement --

A Not from Virginia.

Q --from Virginia?

A No.

Q Have you had any experience in the movement of vehicles from the state of North Carolina?

A We have one right now in North Carolina.

Q Was that a vehicle that had suffered a collision?

A Yes, sir, a stolen car.

Q A stolen car, or a collision, which is it?

A It was both. It was a beauty.

Q Do you know what condition it is necessary to put a car in to move it upon the highways in the State of North Carolina?

A Yes. I worked for Uncle Sam in North Carolina.

Q You told me you did, but do you?

A I am not sure of your questions. To me a government bill of lading is the government is paying for the movement.

Q Yes, and the government does not pay for any of the movement of your traffic?

A Yes.

Q So that the prohibition against moving your traffic on which the government pays the charge would not affect you, would it?

A No, sir.

Q I believe you also stated that none of your traffic moves to automobile dealers, is that correct?

A Unless for warranty.

Q Does the applicant presently move any of those vehicles for you?

A No. We move them all.

Q When you say we move them all, give me an example.

A We have a car in one of our stations and it needs warranty work. We drive it to the dealer to have it fixed.

Q You say one of your stations?

A One of our rental stations.

Q I beg pardon.

A One of our rental stations.

Q That is at these points in Boston, Philadelphia and the New York City area?

A Yes, or if a car would break down out of state and it would have to go warranty we would have to get AAACON to drive it to the nearest Chrysler dealer.

Q And they deliver it at that point to the dealer?

A That is right.

Q They are doing that at the present time daily?

A No.

Q Whenever you need it they do it?

A This might happen once a year.

Q It does not happen very often. If it only happens once a year you don't really need their service but once a year?

A Not for that but for something else.

Q How many collisions has your company experienced in this year and a half out of the cities of New York, Philadelphia and Boston?

A I will have to give you a figure off the top of my head.

Q Give me one.

A Maybe 10 a week, 3 a week, 4 a week. It is according to the weather conditions.

Q Give me an average.

A I cannot give you an average. One week it is three, the next week, none.

Q You have been with this company a year and a half?

A Yes, sir.

Q In that period of time it has been your job to control the movement of cars?

A Yes, sir.

Q In any case where there is a collision in an out of state point you have a control movement, do you?

A Yes. I have to get the car back.

Q A problem for the control of the movement of the car?

A Yes.

Q How many such instances have you had in this year and a half in which a collision was involved?

A 300.

Q How many have you had in which a warranty problem was involved?

A Maybe the same amount, the same number.

Q You are talking about 600?

A Yes, three of each, easily.

Q Of that number how many of the cars were sold in the states where the collision occurred such as the one you indicated in North Carolina?

A Not many.

Q But you don't know how many?

A Not exactly. I would not handle that. That is the lawyers.

Q How did you happen to be cognizant of the situation in North Carolina if you don't handle it?

A No. No. The selling of I don't handle. I handle the collision.

Q Go on.

A What happens is the car was stolen and this man found it on his property and the local police department did not cooperate with the F.B.I., but they told us our car is there and they said, what will you do with it, and it is still down there, but it is a total wreck.

Q So whenever you have a total wreck the inclination is to sell it for junk?

A Yes, we have to ship a man down there first and see if it is a total wreck.

Q And in such a situation you would have no need for AAACON's service or anybody else's?

A No. Well, like that, it would be left there and sell it on the spot.

Q As I understand it the part of the company over which you have jurisdiction which you are speaking for is engaged strictly in so-called short term leases or rentals?

A Rental, yes.

Q What do we mean by this term?

A Day, month, week.

Q What percentage of this is daily rental?

A I would have to look at the figures for this, it is hard to say.

Mr. Kiel: If the witness does not know I don't think he should be prodded and pushed and asked questions again and again.

Mr. Ross: I don't care what Mr. Kiel thinks. I think it is our prerogative to ask this witness for his recollection in any fashion I see fit, and if Mr Kiel wants to take him on redirect or make, as Mr. Davis says, a proper objection I don't deny him that right, but I don't think an objection based on what he thinks is a proper objection.

Exam. Sutherland: I think the witness said he would have to look at some records.

The Witness: Yes. If you want the right answer you would have to look in some records.

Mr. Ross: I realize to give me an absolutely definitive percentage answer you would necessarily have to make a statistical study of your records.

Q I am asking you based on your experience approximately what part of your total rentals are daily rentals?

A At least half the fleet, half or half to three-quarters.

Exam. Sutherland: When you say half your fleet, what is the size of your fleet?

The Witness: 3,500.

Exam. Sutherland: 3,500?

The Witness: Yes, sir.

Q With regard to these daily rentals normally they are rented for use in or used in the immediate vicinity of the point at which they are rented, are they not, like the New

REDIRECT EXAMINATION

Q (By Mr. Kiel) The Dodge vans you discussed, will you describe what they are used for? Do they have seats in those?

A Two seats for passengers and a driver.

Q Do you know what a Volkswagen station wagon looks like?

A It would be the same thing as a Volkswagen bus or station wagon.

Q With respect to your testimony you have indicated one shipment that was handled by AAACON involved a motor that blew out or broke down?

A Yes.

Q And the car had to be taken by the AAACON driver into a dealer to be fixed?

A Yes, sir.

Q And then he drove it to the destination?

A Yes.

Q Would that be the type of situation where AAACON would bring a car in to a repair shop operated by a dealer?

A Yes, sir.

Mr. Kiel: I have nothing further.

Exam. Sutherland: Any further questions of this witness?

Mr. Hill: I have nothing.

Exam. Sutherland: All right. The witness may be excused.

(Witness excused.)

Exam. Sutherland: We will have a short recess.

(Short recess.)

Exam. Sutherland: Back on the record.)

Mr. Kiel: I call Mr. Goodman.

ARTHUR GOODMAN

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel)nPlease give your name and address.

A Arthur Goodman, 4 STandish Place, Hartsdale.

Q Do you maintain a residence at any other location?

A Yes. My family has a residence in Hollywood, Florida.

Q Is Hartsdale a community in Westchester County, New York City?

A Yes. It is about 6 miles above the county line, above the city line.

Q Do you spend any time in Florida as well as the New York residence?

A Yes, I do. I spend time every winter in Florida, the family spends time every winter in Florida.

Q In the usual course how does your family get between New York and Florida?

A They fly.

Q Do you own or rent an automobile?

A I own and rent some automobiles, yes.

Q Do you have occasion when your family and yourself is in

Florida to have an automobile available for their use or your use at that time?

A I would like to very much have automobiles available. In the past we have had on one occasion taken them down and on other occasions rented them for periods of time we were in the Florida area.

Q When you took automobiles down did you have a service where that automobile was driven down?

A On the one occasion we took an automobile down we drove it down and have since never drove it down. We had it sent back.

Q Who took it back?

A We took it down and AAACON took it back.

Q What do you propose to do with respect to the availability of an automobile in Florida the coming year?

A Well, our anticipated stay of myself and my family will be extended. In other words, we used to stay for a couple of months. We anticipate staying five or six months. As such we look forward to the possibility of having our car taken down to Florida for us.

Q What kind of automobile will that be?

A Two automobiles, one a 1969 Ford station wagon and a 1968 Cadillac.

Q There would be a termination of your stay in Florida when?

A Approximately November to May.

Q Would you have the automobiles returned to you here in New York?

A Yes, I would like to have them returned to my home in New York and my other place, the family lives inBrooklyn.

Q Brooklyn is in New York City?

A Yes.

Q Are you familiar with the proposed service that Auto Trip is proposing to render in conjunction with AAACON?

A Yes, I am familiar with it.

Q If that service was authorized by the Interstate Commerce Commission would you use it?

A Well, we are very strongly in favor of it being authorized primarily so that our vehicles could get down there without loss or wear and tear on them, without the possibility of accidents, without all the difficulties entailed in the trip; you put them on whatever you put them on and they don't just drive, they go down and get there in good shape.

Q Will you use that service in the future if it is authorized?

A Immediately. As soon as it is authorized we will use it. We in fact would have occasion to -- one occasion we used AAACON to ship a car to Detroit and in addition we would like to use it from Detroit to Florida and back.

Q Would you use a freight forwarder service of Auto Trip, AAACON's subsidiary, where they would use AAACON to move the car?

A Ofcourse. They pick it up and take it away from me and get it down there with as little driving as possible.

Q Have you ever attempted to find out if there is available a service whereby an individual car can be moved in the manner you are supporting the applicant?

A Lots of times.Every winter. Before we move the cars down I tried it, and I tried it as recently as this past week to see if there was such service available.

Q Will you tell us what you have done and what the results were?

A The first thing I did was, I will tell you exactly what I did. The first thing I did was call the Seaboard Coast Line Railroad Company with reference to moving a car down to Florida and talked to Mr. Richman, and his advice was you can send the car down by freight but it is cheaper to buy a new car, so he effectively and politely told me he could not send my car down. There was no point to it, and he transferred me over to, he said call up somebody, call Universal Carloading, and I called them up and talked to their Mr. Hinderstrom and his attitude was we sort of could move your car but they seemed much happier if I'd wait a long while and they gave me the impression they have a busy season for moving cars and this was not it, and they were not too anxious to move my car at this point. They said, they mentioned that they could move it down to three or four places inFlorida, but that it would be better -- I got the impression they wanted me to wait a while like two or three months was the area they talked about.

Q Did you try anybody else?

A Yes. I called up Anchor Motor Freight of New York, who was the only other person in my yellow pages under automobile trucking and transporting and they advised me they could not move cars for individuals. If I were a dealer he had, you know, 20 cars, or a leasing company, and had different locations in New York and like they could take truckloads down but they could not take them down for an individual; so I could not find and I kept asking them who might do it and nobody seemed to know anybody.

Q If this application is granted will you use their services?

A Oh, yes. It is precisely what I am looking for, one person to move my car all the way with as little driving as possible.

Q Would it be an advantage for you to have a single responsibility, that is one person to be responsible for all the arrangements?

A Yes. I want to call one guy up and he takes care of it. I don't want to know anything about it. If I have to go and get involved with 10 people I will apply for my own rights and go into business.

Q In connection with the operation of Auto Trip, the freight forwarder, did the applicant advise you with respect to the fact that the charges would be greater than the driveaway service charges?

A Definitely.

Q Are you willing to pay more for that service?

A Yes. I got the impression from conversation that would be 75 to 80 percent more than they are for the driveaway service. I would be happier, too. You know, if you have a car and use it for 25,000 miles in 5 years, figure out the cost per mile, it is much easier and cheaper to send it by rail than drive it 1,300 miles to Florida.

Mr. Kiel: That is all I have.

Exam. Sutherland: Mr. Hill.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Goodman, you signed a certification in support for the application in AAACON Auto Transport, did you not?

A Yes, sir.

Q Now, when did you learn of the application that we are dealing here with today?

A I can't tell you the precise day but it was periodically I make my calls. I call around to see if anybody can help my

In other words, he could tell me precisely it would be in the area of 6 - 7 - 8 days, whereas at the present time it is sort of catch as catch can.

Q You mean if you used AAACON Auto Transport now in the driveaway service you would have no idea when it would arrive; is that what you are saying?

A That is right.

Q Was that your experience when you had it shipped back up?

A At that particular time it came up in about, at that particular time, there was no hurry, but it came up in about a 10 day period, but I understand if you don't use a train and use a driver, it will take two or three days depending on how much he rests but if you use this other service it will take longer but it will surely happen this other way in the time prescribed and won't be on the road.

Q So the important thing to you is that the car not be on the road or on the road a minimum amount of time?

A That is a very strong consideration. Yes.

Q If there were another service that would get your car to Florida without being driven over the highway by a reputable regulated carrier you would have no objection to that service, I take it, is that right?

A Would I have objection to it?

Q Yes.

A No. Everybody can do what they like. It is fine with me.

I particularly would like to use the services of AAACON because I have used them in the past and they have proved reputable.

Q On that one occasion--

A Two occasions, that I took a car to Detroit also.

Q When was that?

A A year ago June I would say.

Q Did they give you any holding out as to the time it would take to get a single car from New York to Detroit if you used a forwarder service with a rail line haul?

A Yes, I said before somewhere from 6 - 7 - 8 days.

Q I thought you were talking about Florida.

A Didn't you say Florida?

Q No. Right now, I am talking about New York to Detroit.

A I did not prosecute them on the New York to Detroit time. It is not a too frequently used trip. It is New York to Florida and Florida to Detroit type of situation that is most likely to be of concern.

Q Did they give you the time they would hold out from Florida to Detroit?

A They were not as sure, but again in the general range of 6 - 7 - 8 days. I got the impression that they were sort of going to be more heavily commited in the knowledgeability about New York to Florida trips than they knew about Detroit to Florida trips, but my initial conversation had to do with New York to Florida trips.

Q Did they explain to you that if the forwarder service was used your car would be combined with other people's cars until they got a full carload and then it would be moved out?

A They explained it would take 6 - 7 - 8 days and it did not make any difference to me how they did it.

Q Did they explain it would be combined with other people's cars in order to make up a full carload?

A I understood they were not shipping my own railroad car and taking me down, but I don't know that it will hang around or wait until they get a carload of trucks loaded. If they feel like taking it down it is their business. I do things myself in my business not under ideal conditions.

Q What would be the reason for shipping a car from Miami or Hollywood?

A Florida to Detroit, members of my family live in Detroit.

Q Is it of any concern to you then as to if you had a car to move from Florida to Detroit that it would possibly be held for a considerable period of time to be confined with other cars going in that direction?

A I am not concerned with that That is their problem. They told me they will do something. They are reputable.

Q You are not concerned at all with how much time it takes to go to Florida and Detroit?

A Sure, but they give me a time estimate and they live up to it.

Q They have not done this in the past?

A No.

Q They have not handled any traffic for you in the past where rail service was involved?

A No.

Q Have you ever used any service in the past where the railroad was involved?

A Personally to move the car?

Q For your automobiles?

A No.

Q When is the car going to Florida this year? Did you say November?

A Sometime in that area. Yes. October or November.

Q When you called up Universal Carloading did you ask them for service now or for November?

A I asked them if they had service available. I said I would like to move my car to Florida, can you take care of me. They said, no, Come and try later on. They gave me the impression they did not have the service available now and they would have it available some time in the future. I did not pick a date.

Q You did not want the car movdd today to Florida, do you?

A No.

Q You wanted it moved in November, don't you?

A I would like it moved in October or November, yes.

Q Didn't they indicate to you that the service would be more readily available when they had a volume type movement? In other words, other cars going to Florida also.

A The impression they left with me was one of let's call it lack of concern, lack of reliability in terms of me, my car. They said come back another date. When I call somebody up for a service and they say come back another time -- the proper way to do it is to take my name and come back to me. That is not my cup of tea. I don't like that kind of guy.

Q Did you tell them you want the car moved in November?

A I called them up and asked them could they move my car.

Exam. Sutherland: Before we go any further, Mr. Goodman, what is your position? Did you give us your employment?

The Witness: I am an executive in an insurance brokerage corporation.

Exam. Sutherland: What is the nameof that?

The Witness: Charles Goodman, Nassau Hirsch, Incorporated.

Q That is in New York City?

A 116 John Street.

Q Where did you find the name of Anchor Motor Freight?

A In the phone book.

Q Which phone book, sir?

A Well, it was mine, so I took the liberty of bringing you the page. Here it is.

Q May I look at it?

A Yes.

Q Is this a phone book that is distributed in Westchester County?

A Yes. I live in Westchester County. I live there.

Q This is not the Manhattan phone directory?

A No.

Q Yellow pages?

A No.

Q Did you ever consult the yellow pages of the Manhattan directory, the big one?

A Originally.

Q Did you find the names of any transporters of motor vehicles in there?

A I really don't recall. I made lots of calls. I remember talking to other, what you may call it, other guys in the same business as Anchor.

Q When was that?

A Well, it must have been in one of the numberous rounds of calls. I remember talking. I made them periodically. I happened to be home yesterday and called from home. I normally look under auto driveaway and they refer me around and move around from there.

Q You don't recollect the names of these other companies you called in the past?

A No.

Q When did you call Anchor?

A 8/4, yesterday, about 3:30.

Q How did you happen to call them yesterday?

A Because I was going to testify today and I wanted to make sure that the facts were the same as hwn I agreed to testify.

Q Did somebody from the applicant company suggest you call them?

A No.

Q Had you ever called them prior to yesterday, Anchor?

A Yes.

Q Did you call Anchor previously?

A Yes.

Q If you called them previously why did you call them again yesterday?

A I called everybody in the yellow pages yesterday.

Q1 In the yellow pages of the book inWestchester?

A Yes. I don't work on Monday's and I called everybody in the book. There were only three or four guys under the heading in this book.

Q You did not find very many in that particular book?

A I found -- I will tell you how many in a minute, five.

Q Did it ever occur to you that there may be a larger number of companies listed in the Manhattan book?

A I know there are. I have used the book before. Of course there are more in the New York book. Not everybody buys would make a difference; is that correct?

A Sure.

Mr. Davis: That is all. Thank you.

Exam.Sutherland: Mr. Sack.

CROSS-EXAMINATION

Q (By Mr. Sack) I believe you stated that one of the things that you find deficient about driveaway service New York to Florida is that the time that it will take your car to move from New York to Florida depends upon the availability of drivers to drive your automobiles?

A Excuse me. Did you say I find that efficient or inefficient?

Q Deficient.

A Yes.

Q And that AAACON has never been able to assure you when your automobile might arrive when it moves under such a transportation method?

A They have never been able to give me a fast guarantee and a certain time, that is correct.

Q Are you now saying today that they have held out to you a fast guaranteed time of 6 - 8 days if it moves by rail?

A It was not phrased in terms of guaranteed. It is a metter more of impression. I am talking about moving a car with a driveaway and when talking about that they discuss the availability of drivers and they are clear in the extent that drivers may or may not be available. When you deal with --- when the conversation I had with them with respect to this rail service -- I came awaywith a far more certain impression of a 6 - 8 day period.

Q Did you come away with the impression that the rail service would depend upon the availability of rail cars at a given time and in addition the availability of additional automobiles to fill out that rail car?

A No.

Q Your impression was that the applicant would be able to supply a rail car at any time it desired or at any time you desired?

A I did not get involved in impressions about availability of rail cars. I got involved in impressions my car would get to Florida by rail primarily in a 6 - 8 day period.

Q Do you think that your cars getting to Florida in a 6 - 8 day period would depend upon the availability of a rail car?

A If it were going to move by rail and if rail cars had to be available to move by rail obviously it depends upon the availability. Do I personally think there is a difficulty with availability of rail cars? No.

Q No, or you don't know?

A I don't -- it is my impression there is no difficulty at all with the availability of rail cars.

Q Where do you get that impression?

A There's lots more rail cars than people, and this applicant is going into the business of using rail cars.

Q Your impression is there are one hundred fifty million to two hundred million rail cars in the United States?

A People that would be available as driveaway drivers -- if I am dealing with somebody that would have to depend upon the availability of an individual man somewhere, which he can't plan for, somebody has to show up, either on the way to Florida or wants to get to Florida, that is one thing.

If I am dealing with a substantial corporation that knows it is going to have rail cars in addition it does not have to start looking for its driver when I call up. It can start looking for railroad cars now. It knows what its business is like through the year. I presume there will be rail cars available to it within a reasonable period. It can take a railroad car and have it wait. I once took a course that said railroad cars cost $1 a day. I don't know if that is true.

Q Does that complete your answer?

A Yes.

Q Let me ask you this. Has the applicant indicated to you that it would move your car to Florida in a 6 - 8 day period assuming a rail car was available regardless of whether or not other automobiles had been consolidated to move along with yours?

A It has not indicated specifically that to me. It gave me the impression again that my car would get to Florida within 6 to 8 days via rail travel. I did not discuss how many other cars it would have or need, for those are its problems.

Q Would you expect the applicant to get it moved to Florida within 6 to 8 days whether your car was the only one ready to move or not?

A I would expect them to do what they tell me they are going to do. When I had a conversation with them they indicated to me that is what they thought they would have to do.

Q Listen to the question and respond to it. Would you expect the applicant to move your automobile on a rail car from New York to Florida without any other automobiles moving along with it in order to get it to Florida in a 6 to 8 day period as held out to you?

A If I am calling them and they said they would get my car to Florida in 6 to 8 days I would expect them to do so if they had this, it would not make any difference to me. It makes no difference to me. That is their problem. If they said we will try that would be different, but if they said they would do it they would do it.

Q Would you expect the applicant to charge you $175 to move your car from New York to Florida and pay the railroad $1,200 to furnish the rail car to go to Florida?

A If it is deemed to be in their best business interest, yes.

Q Do you think that would be good business?

A It depends.

Q Would you do it?

A I have on numerous occasions taken the cost of $200 on an item and expended over $1,200 and it was good business at the time. That paid off handsomely since then.

Q And this is on a once a year move by you to New York?

A Then they might decide it was not good business and they would not do it and would tell me about it. They don't have to wait for some guy to come in off the street or find a driver, or find somebody who wants to go to Florida. They obviously are intelligent people and call up the railroad and arrange for railroad cars. The railroad says we will have them or not, and I assume the railroad keeps its word, and they know they have it. If they don't have it they told me we don't have any railroad cars. That is just the whole point. It takes a vague situation they have up in the air.

Mr. Sack: I think that is all.

Exam. Sutherland: Mr. Ross.

Mr. Ross: Yes.

Exam. Sutherland: Call him.

Mr. Kiel: Mr. Examiner, off the record a moment?

Exam. Sutherland: Off the record.

(Discussion off the record.)

Exam. Sutherland: On the record.

Mr. Kiel: Mr. Levy.

SEYMOUR LEVY

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give your name and your address.

A My name is Seymour Levy, I reside at 149 Dover Street, Brooklyn.

Q Are you employed?

A Self-employed. I am president of Seymour Fabrics, Westbury, Long Island.

Q Where do you reside? What city?

A Brooklyn, New York.

Q Do you own or rent an automobile?

A I rent several.

Q Do you have occasion to have one or more of your automobiles moving place to place for your personal or business purposes?

A Counsel, may I just make a very brief statement?

Q Yes.

A I think that will take care of that very quickly.

Q Yes.

A I have been going to Florida for many years several times a year on the average, during which time I have used various transportation companies. Having had one or two poor experiences I was referred to AAACON a few years ago. I have used their services satisfactorily. I heard about their applying for rail rates, rail -- I forget the expression -- rail, what? Rail rights. I beg your pardon. I was asked whether I would be interested in the service and I said that I would be very much more so than regular transportation due to the fact that there would be less wear and tear on the car, and when it was pointed out to me that there would probably be a little higher rate I said that would not make any difference.

Q Where do you go in Florida? Is it one place all the time?

A In the Miami - Hollywood area.

Q How often have you used the services of AAACON in the past?

A Oh, I would not know exactly. I'd say a number of times during the past few years.

Q Would it in each instance be between the Brooklyn, New York area and the Miami - Hollywood area?

A Yes, sir.

Q Do you ever when you have your car moved in the driveaway service carry baggage, personal effects, or sporting goods in the trunk?

A Yes.

Q Do you travel by plane to and from Florida?

A Yes, sir.

Q Give us the name of the carrier whom you used in the past whose service was unsatisfactory?

A Regretfully I can't because it was a number of years back.

Q If this application for freight forwarder authority is granted, which would provide for service by Auto Trip USA, involving pick up of your car in New York at your home and taking it to a railhead, putting on a rail car, moving it down by rail to a railhead in Miami, and then delivering it by driving to your location in Florida would that be service you would use?

A I would be happy to use it. Yes, sir.

Q How often do you think you might use the service?

A At least several times a year.

Mr. Kiel: That is all I have.

Exam. Sutherland: Mr. Hill.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Levy, I don't quite understand what you meant when you said in answer to a question on direct examination that you rent several cars. You mean you have more than one car at a time?

A Yes, sir.

Q You rent these cars rather than own them; is that right?

A That is correct.

Q You say you go to Florida several times a year. On those occasions do you have more than one car shipped to Florida or just one?

A No. Generally one.

Q One car at a time?

A Yes, sir.

Q My copy of your certification of support for the motor carrier application bears a date of July 25, 1969. Is that correct, sir?

A I believe so.

Q When did you first learn of this application or these applications that are being heard today?

A I think a few weeks before this.

Q A few weeks before you signed the certification?

A That is the 25th. Today is the 5th of August. I'd say a few weeks ago.

Q You first learned of the application a couple of weeks ago?

A That is correct. You said a couple. I said a few. Three or four, probably. I am not sure.

Q Did the applicant company or one of its officers or employees approach you and discuss these applications with truckaway service? That is, a service where a motor carrier would handle your car on its trailer to Florida and not be driven over the highways from New York to Florida?

A No, sir, I do not.

Mr. Hill: That is all I have. Thank you.

Exam. Sutherland: Mr. Davis.

CROSS-EXAMINATION

Q (By Mr. Davis) Mr. Levy, what you want here is an expeditious service between Brooklyn and your place in Florida whereby the long line haul movement will be either by truck or by rail. That is what you are supporting here?

A Yes, sir.

Q You don't care who performs the motor carrier driveaway pick up and delivery service to Florida, do you?

A I certainly do.

Q You do?

A Yes, sir, just as I have hundreds of customers I service around the country I like to think those customers come back to me because I have serviced them well and when I get a supplier who has taken care of me properly I like to continue with him so I would not go to anyone else unless I have any problem with AAACON, which I have not during my experience.

Q So that if the record would show that Motor Convoy, Inc., for example, could provide you with a reliable expeditious pick up and delivery service in driveaway service between drive the vehicle down?

A I'd have him drive it down under those circumstances.

Q Should the applicant not obtain the authority you are here supporting you would also continue to have him drive your vehicle down?

A Yes, sir.

Q And that service has been satisfactory?

A Yes, sir.

Q Have you had any ocdasion to seek transportation service from any other carrier such as Auto Driveway Company?

A In between the times I had one or two bad experiences and the date I became familiar with AAACON I tried several others. I have not used them there.

Q You have never used Auto Driveway Company specifically?

A No.

Q Have you ever used Insured Transporters?

A No.

Q In any of its forms?

A No, sir. Not that I recall.

Q Were you apprised by the applicant as to the approximate time level of charges that would result from the movement of the freight forwarder?

A No, sir. Just that it would be more.

Q You have no idea then whether they were referring to $190 or --

A Other than what I heard today, no.

Q Assume, if you will, that the charge is approximately double what you are now paying for service would you use it?

A I'd use that new service.

Q You would use the new service under those conditions?

A Yes, sir.

Q But you would not use that service if it required 2 - 3 - 4 weeks to get there?

A I could not because of my time limit.

Mr. Ross: Thank you.

Exam. Sutherland: Mr. Ewald?

Mr. Ewald: No questions.

Exam.Sutherland: You may be excused.

(Witness excused.)

Mr. Kiel: May I call my next witness?

Exam. Sutherland: Yes.

Mr. Kiel: MrthLuth.

MURRAY LUTH

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please state your name and residence address.

A My name is Luth, Murray.

Q What is your name?

A Murray Luth, 401 East 68th Street, Manhattan.

Q By whom are you employed, Mr. Luth?

A By Fred Waring.

Q In what capacity?

A I am his general manager and personnel manager.

Q What is the business of Fred Waring?

A Entertainment business, primarily. His age, he is 69 now, and he works about 5 months a year doing concerts. He stays away from television. It is too demanding, and so forth.

Q In connection with this proceeding have you been advised what the applicant Auto Trip USA is trying to do is secure freight forwarder authority?

A Yes, I have. I have been told that, this is something I have asked him for years, and I can explain how I asked if you want to know.

Q I'd appreciate that.

A Fred Waring is a very meticulous man. He does not like to read a newspaper you open up. He does not like his cars driven unless he is forced to by somebody else. I talked to the Zola people several times as to a means of getting his cars from New York to California and back as he has a home in California.

Q Do you know where in California?

A He is in Palm Springs.

Q Where is his home in New York?

A Pocono Mountains, in Stroudsberg, Pennsylvania.

Q That is in Pennsylvania?

A Yes.

Q Will you continue?

A I say it again. It is a mechanical problem, and we have had problems in getting the car back where it will get a blow out, and he buys the best tires and puncture proof, but it will happen, and Mr. Waring and his wife will travel up and back and he enjoys having his personal belongings when he goes from one home to another. They spend 6 months in California and 6 months here. He owns a hotel in the Pocono's, and it is very disturbing to him because one time I told Mr. Zola I will not give him the trunk key, because they had a blow out the time before, and the poor young lady who drove this car was quite frantic and disturbed, and the things they put away neatly, and the second time he did not give him the key, and you know what happened, a blow out.

Q In that respect do you arrange for the movement of Mr. Waring's car from time to time?

A Yes. I arrange for it every year, but we have two other cars we use in business.

Q Will you tell us about those two?

A We are in the concert business and there are times when there is a jump -- I remember two specific instances. I have a crew and stagehands set up a show before the entertainers get there, and, therefore, they have to have other vehicles than we use, which is primarily a bus or a plane if we have to travel, and I on occasion, I remember one about a year ago, we were playing San Francisco and we were going up to Portland and Seattle, a bus, and we had to be down in Salt Lake City on the fourth day, and no other way of getting my car because we used bus and flew to Seattle, and I called New York and they have offices in every city that I travel, in the major cities, and they were able to arrange to have a man bring a car from San Francisco to Salt Lake City by car. That particular car, if anything happened I am in trouble.

Q Why?

A If anything happened to the car I have to move day to day, we work every day. I have also had breaks where I have sent the car home from Dallas to New York. I have sent it home from Minneapolis to New York when we have a break. In other words, rather than have to pay a man 3 or 4 more days salary and wear and tear on the car it is cheaper for me to have AAACON do it.

Q Now, sir, how long have you been doing business with AAACON?

A That is a good question. I heard the cross-examination before, and I did not intend coming here to be a hostile witness except for something I enjoy having. I'd say it is about 8 - 9 years since Mr. Waring bought his home at Palm Springs, and I am guessing.

Q And during that period of time you have usdd AAACON?

A Every time I needed a car transpotted.

Q If Auto Trip USA, a subsidiary of AAACON, were authorized to provide a transportation service as a regulated interstate carrier using AAACON to pick up and take the car to a railhead, and put it on a rail car, and take it to another railhead, and then deliver the car from that railhead to wherever you designated would you use that service?

A I certainly would. For Mr. Waring's sake I would.

Q Would the amount of use be substantially the same as what you have just described as your past experience with AAACON?

A Sure. He has two cars. We drive one because he feels that it is not good to have both his cars, and they are no better than anybody else, and today they are better because I get better service. I tried a couple of others before I used them and I know what happened.

Q What happened?

A I had a fender knocked in and the man said he did not do it, that it was there all the time. At least with him, when I had problems and I had a bumper and somebody backed into him and he said, "I will have it fixed," and he did. I feel they are very reliable. The amount of car time I need cars and Mr. Waring needs at least one car to go out in the fall and come back in the spring, with the exception of this year because his son is out of Service and drove it back for him.

Q Why would you use the forwarder service whibh involves a partial rail movement as against the driveaway service which could be performed at a lower cost for you?

A Mr. Waring buys a car every other year and I think he would like to have it last two years and he always worried about wear and tear on the car and anybody else driving his car.

Q Are you concerned about it because of that reason?

A Only for his sake.

Q If this service were authorized by the Interstate Commerce Commission would you use it?

A Yes, sir.

Mr. Kiel: I have nothing else.

Exam. Sutherland: Mr. Hill.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Luth, do I understand then that there is only one car that moves from Stroudsburg to Palm Springs or in the reverse direction?

A You did not understand right. I said he owns two cars. We have sent two cars before.

Q Do you always send two cars?

involved between Palm Springs and Stroudsburg?

A Yes, between the two major cities, Los Angeles and New York. Yes, I do, because in the past I have asked Mr. Zola if there is any other way of getting the car, and I would like to go by rail, and he knows that, and that is why he called me to tell me about this.

Q If the car originated at Stroudsburg did you inquire of the applicant as to what railhead would be utilized?

A No, I have not because there have been times when he would find a reliable man and call me and he could have somebody bring it down from Stroudsburg to New York so we could get it out in time. I consider myself a good customer even though I am not an Alexander's, and I don't send too many cars, but he's been helpful, very helpful, and I have been helpful to them. If he gets a man, and it happened once he could not take it to Palm Springs, a teacher on a vacation, I had Mrs. Waring send a woman into L.A. to meet him and get the car.

Q My question is do you know what rail origin point will be involved in this transportation fromStroudsburg to Palm Springs?

A I gather why you are asking. I will answer it. There has to be a couple of changes. In order to avoid this I'd rather get it from one railroad point to another point.

Q So your answer is you actually don't know the rail point

AFTERNOON SESSION 2:00 p.m.

Exam. Sutherland: The hearing will come to order. Mr. Kiel.

Mr. Kiel: Mr. Zimmerman.

STUART ZIMMERMAN

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give your name and home address.

A Stuart Zimmerman, 212-04 73rd Avenue, Bayside, Queens.

Q By whom are you employed?

A Olin's Rent-A-Car.

Q Do you work with Mr. Vincent Liguori?

A Yes, I do.

Q Is he your boss?

A Yes.

Q Did he ask you to come to this hearing to represent the company in lieu of himself?

A He did.

Q What is your position with the company?

A City Manager.

Q Do you have any responsibility for the arrangements involved in using automobile transporters for moving automobiles for your company?

A Yes, I do.

Q What is your position with Olin's?

A I told you.

Q City Manager?

A Yes.

Q What is the business of Olin's?

A We rent and lease cars.

Q How many cars do you rent?

A We have a total fleet of 3,000 cars.

Q Where is the principal office of your company located, what city?

A New York City.

Q In what city or cities are your rental locations?

A Strictly New York, and Nassau.

Q Nassau County is east of New York City?

A Right.

Q Sometimes referred to as Long Island?

A Right. Yes.

Q What type of rental business does your company do?

A We do daily rentals and long term leasing.

Q Would you break down -- what portion is so-called long term and what is daily rentals?

A We have about 2,000 cars in our daily rental fleet and 1,000 long term.

Q In the course of business, in the course of your business and duties have you become familiar with AAACON Auto Transport?

A Yes.

Q How did that occur? How did you become familiar with it?

A I worked for Hertz at one time and we used AAACON with them and we also now use them with Olin's.

Q Under what circumstances would you have occasion to use someone to transport an automobile of your company?

A Since we have no offices outside of New York when we have a car at any distance away we have to have it brought back if the customer leaves the car, or if he takes it one way, and then we employ AAACON to return the car to New York.

Q What would be the circumstances when a customer might leave a car?

A It would be a faulty car or an abandoned car.

Mr. Davis: Will you speak up a little?

Mr. Kiel: He said a faulty car or where he's abandoned a car.

Q Does that happen from time in your business?

A Quite often.

Q Does your company rent long term cars to people who might decide to leave them in St.LOuis, Missouri, for example, and have you return it?

A Well, not long term. It would be the daily rentals they leave there.

Q This would not be a scheduled arrangement, this would be something that happened without your company agreeing to it?

A Right.

Q Can you give me an example of the location of these situations when you had to arrange for the return of an automobile using AAACON from a place where one of your customers or one of your cars was left unattended and had to be returned by you?

Mr. Ross: Before the witness answers I wonder if we might have it clarified when Mr. Kiel uses the word "you", is it this witness personally?

Mr. Kiel: No. The question -- I am speaking about Olin's in everything when I say "you."

Mr. Ross: In that event I would object until such time as it is made clear in this record that this witness has any jurisdiction beyond the city. His title is City Manager and that would seem to me to indicate that his duties are confined to the city, which I assume must be New York City.

Exam.Sutherland: Clear that up.

Mr. Hill: I raise this point, I don't believe we have anything on record as to how long he's been with the company.

Q How long have you been employed by Olin's?

A 2 years.

Q What is your jurisdiction as City Manager for Olin's with respect to arranging for transportation of your cars?

A Well, I am in control of recovery of these cars. In other words, we have a General Manager and a City Manager. It is my job to make sure all the cars are accounted for and returned to the fleet.

Q Would that be for all the cars in New York City as well as Nassau County?

A Including Nassau County.

Q Could you tell us, sir, during the period of your employment where you have had cars left that had to be returned to this area?

A I'd say approximately a week ago we had one returned from South Carolina. The car was stolen from the customer in North Carolina and they drove it to South Carolina. It was picked up and in turn we had to bring the car back.

Q To where?

A Back to New York City.

Q Will you give us some more locations of states where you had a similar type of situation and the car had to be returned to New York City or Nassau County?

A We had a case in Nevada. It was the same instance. The people were picked up by the cops. We had to have the car brought back. One in Florida where a car broke down. We had it repaired by a local garage. The customer couldn't wait. He came back by his own transportation. We had AAACON bring the car back for us.

Q Are these typical of the situations your company has where it requires transportation?

A Right.

Q Are you familiar with the fact that the application of Auto Trip USA is for freight forwarder authority?

A Right.

Q Did I explain to you what the freight forwarder did and how they did it?

A Yes, you did.

Q In that connection, sir, if Auto Trip USA had available a service which involved a pick up of an automobile through AAACON and the automobile was then driven to a railhead and put on a rail car and taken to another railhead near destination and delivered by AAACON would you be interested in using that service of Auto Transport?

A Yes, we would.

Q And, sir, why would you use that service as compared with the driveaway service?

A Well, in many instances when we have to have these cars brought back it is a long trip. It is over two thousand miles. It would be savings on the car as far as having someone drive it back, it would be better for us if it is brought back say on a train so there is no wear or tear on the vehicle.

Q Would that be the basic reason you would want that type of service?

A That would be the main reason, yes.

Q Are you aware that the cost of this service would be greater than the driveaway service you now use?

A Yes.

Q Would that be a deterrent to using this forwarder service?

A No.

Q Have you been solicited by anyone offering to provide you a service where you could get your cars put on a railroad and moved including the pick up and delivery service?

A No.

Q If this authority were granted how often do you expect that you would have a need for the service of the freight forwarder?

A There is no set thing. It would be when the need arises and right now we have been averaging I'd say maybe between two and five a month.

Q Do you expect in the future the amount of automobiles that would have to be transported would be similar in number, sir?

A It should be at least the same since our fleet is increasing.

Q Has your fleet been increased?

A Yes, it has.

Q During the period of time you have been with the company how much of an increase has there been in your company's fleet?

A About 900/

Q That would be almost one-third?

A Just about.

Q Does that cause these situations to occur more frequently than when you had a smaller fleet?

A Right.

Q Does your company pay the transportation charges for these movements you would use Auto Trip USA for?

A Yes.

Mr. Kiel: I have nothing else to ask. You may inquire, Mr. Hill.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Zimmerman, for this two year period you have been with Olin's Rent-A-Car have you held the same position?

A No, I have not.

Q How long have you held your present position as City Manager, sir?

A For the past year.

Q When did you learn of this application proceeding?

A Approximately a week and a half ago.

Q When I say "you," I meant you personally.

A Right.

Q Is that correct, sir?

A About a week and a half ago.

Q Did someone with your company sign a certification of

A Yes.

Q As I understand it your interest is in transportation that would be from various points to New York City or this point in Nassau County, is that correct?

A Right. There are instances where we would possibly make an in between drop.

Q I did not quite follow you.

A There are instances where there might be an in between point drop such as if we have for some reason something happened to a customer say in California and the car had to be repaired and he had a business appointment in Chicago, we might take the car and drop it off in Chicago to meet this fellow and then he would take it back to New York so as not to inconvenience the customer.

Q These would be relatively a minor number of instances as compared to the others, is that right, sir?

A Right.

Q This example you gave where there was a car in South Carolina moved to New York City, was that very recently?

A Within the past month.

Q What point in South Carolina was involved?

A Raleigh, I believe.

Q Raleigh, South Carolina?

A North Carolina.

Q Actually it was North Carolina?

A North Carolina. The fellow had the car stolen in South Carolina.

Q The actual movement was from Raleigh, North Carolina to New York City?

A Right.

Q Did AAACON handle that for you?

A Yes, they did.

Q The car from Nevada to New York City, when was that?

A I'd say that happened about four to five months ago.

Q Do you know the name of the origin point?

A The city, I don't recall.

Q Did AAACON handle that one also?

A Yes.

Q And the one in Florida, what was the origin there?

A I don't recall the city, sir.

Q Did AAACON handle that one?

A Yes.

Q You say you are willing to pay a higher price for transportation where forwarder service is involved. Did any representative of the applicant, either of the applicants or Mr. Kiel, the attorney, indicate to you, for example, on a movement between New York City and Florida what the difference would be in the driveaway cost and in the forwarder cost where there was an intervening movement by rail car or automobile truckaway service?

A Did they mention if it was a higher cost?

Q Did they tell you actually what the actual difference in cost would be?

A No, they did not.

Q What did they tell you, simply that it would be more money if the forwarder service would be involved?

A They mentioned it would be a higher percentage in the cost.

Q If it were considerably more for the forwarder service than for the driveaway service would that not be a consideration of yours as to whether you would use that service?

A They have always been fair in their price and we feel it won't be that high and it will be a saving to us as far as wear and tear on the car.

Q You don't know how much higher at the present time?

A No, sir.

Q If it was way in excess of what your driveaway cost is wouldn't that be a consideration of yours in determining whether you would use the service?

A I would say they have been fair with us and I don't think it will be that much higher.

Q But assume with me for a moment that it is much higher would that be a consideration whether you would use that service, sir?

A If it is exorbitant of course it would make us think.

Q Suppose it was twice as much for the forwarder as it is by driveaway, in the situation there would you have to reconsider?

A Twice as much we would reconsider.

Q Did anyone with the applicant companies or Mr. Kiel, the attorney, explain to you how the forwarder service would work insofar as consolidating numbers of cars to make up full rail carloads or motor carrier truckloads?

A Yes.

Q You understand that if you had a single car, for example, in Oklahoma, and you wanted it returned to New York it would have to be consolidated with other cars to make up a full load; is that right, sir?

A Right, sir.

Q Did they tell you what the time would be on instances such as that?

A No, they did not.

Q Would the time be of any consideration or any interest to you?

A Again if it is going to be a tremendous amount of time, of course it will.

Q In other words, you want to keep these cars in use, do you not, so they can produce revenue for you?

A True, but they have always been speedy with the service they have right now and I think they will still try to keep speedy service this other way.

Q You say the service they provide now that is driveaway service?

A Correct.

Q If the service by forwarder were of greater duration or it took you considerably longer to get your cars would you have to reconsider at that time?

A Say it was two weeks longer.

Q If it was two weeks longer you would not want to use them?

A It would not hurt us.

Q Suppose it was over two weeks longer?

A Then we would consider it.

Q Did they tell you from any representative points around the country the type of service they propose to give you by forwarder?

A No.

Q They gave you no indication whatsoever?

A I don't follow your saying any point around the country.

Q Take any point you might be interested in transportation.

A It was mentioned it would be driven to a point where it would be loaded on a train and then headed back to New York.

Q But did they give you any example of the time involved when the forwarder service was to be used?

A No.

Q Weren't you interested in that feature?

A Again, we have never had a problem with them. In other words, we have dealt with AAACON exclusively and the service has been fine.

Q So you assume the forwarder service would be comparable in time to the driveaway service, would that be a fair statement?

A Yes.

Q If it were not, if it were considerably in excess of the time involved in the driveaway service you would have to give further consideration to your use of it?

A Again, if it was over a two week period over what we have now we would have to give consideration to it.

Q In the transportation of your company's cars have you ever contacted any representatives of regulated motor carriers as to what truckaway service might be available for this transportation?

A No.

Q Have you ever contacted any railroads to see what service they might have available?

A No, sir.

Q Have you contacted any freight forwarder to see what service they might have available?

A No.

Mr. Hill: I think I have nothing further. Thank you, Mr. Zimmerman.

Exam.Sutherland: Mr. Davis.

anything important he would have mentioned it to me.

Q At any rate someone else might have been called upon prior to a year ago?

A It is possible.

Mr. Hill: That is all.

RECROSS-EXAMINATION

Q (By Mr. Ross) If I understood you correctly you have never had any occasion when you had service from AAACON in which it was not provided in a satisfactory manner?

A It's been satisfactory.

Q It has always been satisfactory?

A Yes.

Mr. Ross: Thank you.

Exam.Sutherland: Any further questions?

(No response.)

Exam.Sutherland: You may be excused.

(Witness excused.)

Mr. Kiel: We have two witnesses scheduled for 2:30. It is 25 after now. I have discussed with certain protestant counsel who had witnesses from distant points here and we discussed the basic consists of the supporting testimony and indicated as has been shown so far that the witnesses will follow certain general groupings and it is my understanding that the witnesses that we will have will be pretty much testifying to substantially the same type of needs and requirements as the prior witnesses. There may be differences in the businesses or the points of service, but basically I think the testimony will follow a certain pattern and I agreed that for their convenience if they so desired I would have no objection to their calling a witness during any period such as this when witnesses are not here but on the way. We had two witnesses this morning who could not stay. There is one here now.

Exam.Sutherland: Then apparently you have the witness now and you are ready to go ahead.

Mr. Kiel: Yes, one of the 2:30 witnesses apparently is here. May I have a moment, please?

Exam.Sutherland: We will have a recess.

(Short recess.)

Exam.Sutherland: Back on the record. The hearing will come to order. Mr. Kiel, I understand you have two witnesses who are ready.

Mr. Kiel: Yes

Exam.Sutherland: I can swear both of them at one time.

WALTER B. BAILEY

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Mr. Bailey, will you give us your full name and residence, please?

A WalterB. Bailey, 43 Calvin Avenue, Syosset, Long Island.

Q By whom are you employed?

A E. R. Squibb & Sons, Inc.

Q What are your duties?

A Personnel Administration Director.

Q Sir, what is the business of your employer?

A Manufacturing pharmaceuticals.

Q How long have you been employed?

A 38 years.

Q At what location do you work?

A 909 Third Avenue, New York.

Q New York City?

A Right.

Q Does your company have places of business at other locations in addition to New York City?

A Yes.

Q Where?

A New Brunswick, New Jersey; East Brunswick, New Jersey; Somerset, New Jersey; Boston, Massachusetts;Atlanta, Georgia; and Houston, Texas; Kansas City, Missouri; Chicago, Illinois; Seattle, Washington; Los Angeles, California. I hope that is 13. I am not sure.

Q That is 11.

A Cincinnati, Ohio; Omaha, Nebraska.

Q Does your company have employees located at these facilities?

A Yes.

Q Does it have employees who work out of these facilities and serve as sales representatives in areas around these facilities?

A Yes.

Q What are located at the 13 points you have given us?

A They are manufacturing locations in New Brunswick. The rest of them are distribution centers, sales regions.

Q Do you have sales representatives that cover the United States from these distribution centers or sales regions?

A Right.

Q How many sales personnel does your company have? Approximately, sir?

A About 1,000.

Q Does your company from time to time relocate or change the working area of its sales representatives and other personnel?

A Yes.

Q When that occurs does your company undertake to pay the relocation costs and expenses?

A Yes.

Q In connection does that come under your jurisdiction?

A That is correct.

Q In connection with the relocation does your company undertake to move the property of the personnel that is being transferred?

A Yes.

Q Would or would not that include the automobile or automobiles?

A That is correct.

Q Which is it, it would or would not?

A It would.

Q In that connection in the past have you used the services of AAACON?

A Yes, I have.

Q Under what conditions and circumstances would a man be transferred?

A Reassignment of job, moving from one area to another, either to the main office, or to another sales region, or from the main office to a sales region, or heading up distribution centers, and that type of travel.

Q What do you have in Seattle?

A We have a distribution center.

Q Would you have sales representatives working from that center?

A Yes. In that facility itself it ships the orders, but the regional sales manager has his office there, and he has in Seattle somewhere in the neighborhood of 60 salesmen that go all the way back in towards Minneapolis and down as far as, well, into Oregon.

Q Would these sales representatives live in the Seattle area or throughout the territory?

A They live throughout.

Q How often do you move personnel from one area to another, or from one location to another?

A Well, we move about 100 people a year, and I would say that the majority of them are salesmen.

Q In that connection does your company undertake to pay the expense of moving an automobile, for an example?

A Yes, we do.

Q Would you arrange to pay for a door to door move from his residence to his new residence?

A Yes, we would.

Q Would the same be true on his household furnishings?

A Correct.

Q Have you in the past on occasion had the household mover arrange for the transportation of the automobiles in addition to your doing it directly with AAACON?

A Yes.

Q Has that service worked out to your satisfaction?

A No.

Q Would you explain why?

A The cost was higher and in a number of instances we could not get the mover to handle the automobile. We are looking for the mover to do the complete job and in some instances they would not do it or would only take liability to a railhead and then we got involved with that from there on.

Q Have you been advised as to the freight forwarder application of Auto Trip USA planning to provide a service in the United States whereby automobiles would be picked up at the residence of your employee and taken to a nearby railhead where there would be facilities for loading multi-level cars and having the cars carried by the railroad to another area where they would be distributed and delivered by driveaways of AAACON to the home of the employees?

A Yes, I have.

Q Have you been advised that it would be one responsibility and one person to call and they would undertake as well to do the entire job for you?

A Yes, I have.

Q If such a service were available would you use it?

A Yes.

Q Is that why you are here?

A Yes.

Q How often would you have occasion to use such service?

A That I really could not say.

Q Based upon your past experience what would you say?

A Well, I think we move, and this again is an estimate, about 25 automobiles a year out of these 100 moves, either the second car of the family or a man has been moved a great distance and does not want to go back and drive his car on, so it is hard for me to say how many times I would use this service. Of course I would want both services so that I could either have it driven all the way or use the rail as far as the -- drive to the rail and then on rail, and the advantage of the rail that I see is from our employees' standpoint the wear and tear on the car, and I suspect the company would give them the option of having it done either way.

Q You are aware it would be more costly to ship it using the forwarder service than the driveaway service?

A Yes, I am.

Q Do I understand that your company would pay for the transportation service?

A That is correct.

Q Would it be correct to state that you could not say between what points in the United States this service might next be required, or for the second, or third time that that might be required?

A No. We would not know. I would not know. I could not anticipate what moves we are going to make.

Q Do your personnel who are those which would be the most likely to be relocated, do they work throughout the United States?

A Yes.

Q And might they be transferred from one area to another and one region to another?

A That is correct.

Q Is that the type of service you are looking for?

A Yes.

Mr. Kiel: I think that is all I have. You may inquire.

Exam.Sutherland: Mr. Hill.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Bailey, how long have you been the Personnel & Administrative Director ofSquibb?

A That title -- I have been in the personnel area some 15 years -- that title is only a year and a half.

Q How long have you had any responsibilities with respect to the movement of your employees' automobiles?

A For the last, since 1962.

Q When did you first utilize the services of AAACON Auto Transport?

A I personally used them for the first time in July -- in June.

Q Of this year?

A Of this year.

Q Does your company have a traffic manager or director of traffic that would be responsible for the movement of your company's products?

A That is correct.

Q Does that individual have any responsibility for the movement of the automobiles or personal property of your company's own employees?

A Yes, he does through me.

Q Through you?

A Yes. I issue the orders to him.

Q And he takes care of actually obtaining the transportation if it is needed; is that correct, sir?

A That is correct.

Q Have you had any discussions prior to appearing to testify in this proceeding with your traffic manager as to what services may already be available for the type of transportation that is under consideration here?

A Well, only from my experience with him we have had problems with the moving of these cars for years. As I say, I try to put them in the van, and especially in the small cars, to go in the van, or to the mover handling them to a railhead, and one of the problems we have had is damage to automobiles, and the employee is never satisfied even though you repair it; so we have given the employee the option, and this is one of the reasons I have been dealing with AAACON just recently, paying him the amount it cost us to transport that car and sell the car there and buy another one where he goes because the cost involved in this -- we were paying $600 to a man from California to New York in replacement for a car, where I can get the car driven for 150, so let's face it, gentlemen, money is money, so that is the kind of problem we have had with it.

Q Cost certainly has to be a factor in the picture, does it not, sir?

A Certainly. Yes.

Q I assume no matter what happens as a result of this proceeding you are going to give your employees the option of utilizing the driveaway service if that is the way they want the car moved; is that right?

A Yes.

Q So the employee will have the final say on how the car is moved; is that correct?

A That is correct.

Q Suppose the forwarder service as proposed here by Auto Trip USA, suppose the cost of that service is twice as much as the cost of this driveaway service, are you still going to give the employees the option?

A Yes.

Q Suppose it is one and one-half times the cost of the driveaway service?

A We would still do so. I think, if I can elaborate on that, I think the reason we would do that, and it does not sound logical when you are spending extra money, is that some employees don't want anybody else to drive their car. We have had this kind of problem.

Q What have you done in the past under those circumstances?

A Well, we have just had to leave it up to the mover to get the car here.

Q You say approximately 100 people a year are moved by your organization?

A Correct.

Q During the last year of the 100 people that were moved how many of them drove their own cars and took the responsibility for the movement?

A Well, I only had about approximately, I am guessing, 25 cars to move, so I would say then that 75 percent, it could be 100, but they may have been second cars in this thing, but a number of them have driven their cars.

Q Of the 25 you had moved your company took some responsibility for seeing the cars were moved?

A Yes.

Q How many of those 25 cars were moved by the household goods carriers utilizing their vans?

A All except those who took cash in lieu of.

Q The only service you procured for the movement of the cars during the last year was service available from the household goods carriers?

A That is correct.

Q Is the time involved in the movement of these cars of any importance to you acting on behalf of your employees?

A Well, I suppose it would depend on the amount of time. However, there is time now -- I mean they are waiting for the household goods in a lot of cases.

Q Sofar as your discussions with your employees and that sort of thing do you find that they are rather anxious to receive their cars as soon as possible after they have made the move? Would you say that is a fair conclusion?

A I would say so. However, the company again would authorize, and it is a very liberal policy, to have them rent a car and that has happened in many cases at the new locations.

Q Of course that is an extra expense to your company?

A Yes.

Q And if you could avoid that and the people could still have their cars you would rather avoid it, wouldn't you?

A I would.

Q Is it correct that you personally have no knowledge or made no investigation of what services may currently be available either from railroads, from freight forwarders, or from motor carriers with truckaway equipment to haul other than driveaway over the highway at the present time, is that a fair statement?

A I have not. No, but our transportation manager tells me this is the only way I can do it.

Q What is the only way he can do it?

A Through the movers, the household movers.

Q Well, you have the applicant company here today with driveaway authority throughout the United States, don't you?

A Right.

Q Did you know that?

A I knew that, but I say I only started to use him in June.

Q Is that when you first found out they had that authority?

A Yes.

Q Did you ever check to see if there were any other companies with this driveaway authority?

A No, sir.

Q Do you know actually whether your traffic manager ever looked for that type of carrier in the past?

A I could not really say whether he did or not.

Q Do you know whether he actually looked for any truckaway motor carriers of used passenger automobiles?

A No, I would not know whether he did or not.

Q At any rate your employees are going to have their say as to whether they want the car moved driveaway or through some freight forwarder arrangement, or some other arrangement, is that right?

A That is right.

Mr. Hill: That is all I have.

CROSS-EXAMINATION

Q (By Mr. Davis) When is the last time you moved a car into

Exam. Sutherland: Mr. Ewald?

Mr. Ewald: No questions.

Exam. Sutherland: Mr. Kiel?

Mr. Kiel: No questions.

Exam. Sutherland: You may be excused.

(Witness excused.)

GEORGE A. HEMINWAY

was duly sworn and testified as follows:

DIRECT EXAMINATION

Mr. Kiel: May I have the witness' name, please?

The Witness: My name is George A. Heminway.

Exam. Sutherland: I think we should have Mr. Sack develop that.

Mr. Kiel: I was not in the room. I am sorry.

Q (By Mr. Sack) What is your name?

A George A. Heminway.

Q Are you affiliated with National Trucking Company, a protestant in this proceeding?

A I am.

Q What is your position with National?

A Vice president.

Q How long have you held that position?

A Well, I just got that title July 15th. Prior to that I was secretary - treasurer and assistant general manager.

Q How long have you held your prior positions?

A Directly since 1955 and indirectly since 1947.

Q What is National's business address?

A Our general office address is 4804 Nolan Street.

Q Jacksonville, Florida?

A Jacksonville,Florida 32201.

Q What do your duties include now in your capacity as vice president and what did they include prior to your assumption of that position as secretary-treasurer?

A The over-all administration in the handling of operations of the various departments of the company including all the operating functions and the administration.

Q Have your duties made you familiar with the company's equipment, facilities, rates, finances, services and operations generally?

A Yes, sir.

Mr. Sack: Mr. Examiner, may I have marked for identification at this time a series of 4 exhibits which are before you, the reporter and other company counsel in the order which they are before you, the first being National's I.C.C. certificate.

Exam. Sutherland: It will be marked Exhibit 10.

(Protestant's Exhibit No. 10, Witness Heminway, was marked for identification.)

Mr. Sack: The next is a tractor list.

Exam. Sutherland: It will be marked Exhibit No. 11.

(Protestant's Exhibit No. 11, Witness Heminway, was marked for identification.

Mr. Sack: The next is a trailer list.

Exam. Sutherland: It will be marked Exhibit 12.

(Protestant's Exhibit No. 12, Witness Heminway, was marked for identification.)

Mr. Sack: The last is a driver list.

Exam. Sutherland: It will be marked Exhibit 13.

(Protestant's Exhibit No. 13, Witness Heminway, was marked for identification.

Q What generally is National's business?

A National Trucking Company is engaged in the transportation of automobiles and trucks and farm type tractors, motor vehicles in both initial and in secondary movements.

Q In truckaway?

A In truckaway and driveaway service.

Q In interstate commerce and in intrastate commerce?

A Yes, that is correct.

Q In what states does it hold intrastate or inter?

A In the State of Florida and also in the State of Georgia with certain counties.

Q And is Exhibit 10 for identification a copy of your company's I.C.C. certificate?

A Yes, sir, Exhibit 10 is the underlying authority.

Q Does the authority therein contained authorize your company

A We could, but I think my answer to you is that in most instances we do not do it, and I would say it would be the exception to the rule. However, to be flexible we can do this.

Q Will you tell me, sir, with respect to operations conducted by your company is yor only secondary driveaway authority that your company now uses the top paragraph of sheet 2 of Exhibit 10?

A You are talking about between points in Florida and that part of Georgia on and south of U. S. Highway 78?

Q Yes. That is the only secondary authority you are now using, isn't that so?

A Other than the fact we do have in addition to that the traffic, I was trying to say being as flexible as we could we also originate secondary traffic, secondary driveaway traffic that may end up in Richmond, Virginia.

Q You have some secondary movements out of Ridgeland, South Carolina, you don't use that at the present time?

A That is what I referred to a little while ago, but we have not used it of recent date.

Q Will you tell me what portion, how many automobiles does your company transport in a year, approximately?

A Approximately 146,000.

Q Will you tell me of that number how many are new as compared with used?

A It would only be an estimate because I would say the majority of it is new.

Q What would you say, 145,000 would be new or 145,500 would be new?

A I would not venture a guess on it. I would say roughly about 1,000 to 1,200 units may be used.

Q You don't really have any --

A I haven't the figures. I don't have the figures.

Q --information to substantiate even that?

A The only way I could get it would be to go through these voluminous documents we have for a year to try to figure it out. I can tell you we'd had 1,309 for the year 1968.

Q Those were new and used both?

A Yes, both.

Q Could you break down the 1,000 used automobiles and tell me which of those were truckaway and which were driveaway?

A I would not try to give you an estimate. This past week we just had 12 tendered to us we moved from one of our terminals that was going to be destined to be interlined in Jacksonville on a trip going to Richmond, Virginia.

Q That has notning to do with Florida or Georgia, does it?

A We also go from Georgia to Florida. We just had one unit from Bainbridge, Georgia to Jacksonville.

Q Actually with 146,000 automobiles moved in a year the driveaway movementof used automobiles is so limited that you can actually remember the occasions when you had such movements?

A No, I cannot say that because we have these all along.

Q Can you tell me of any business that you know of that your company is handling that you might lose if the applicant AAACON were authorized to act as a pick up and delivery carrier for its subsidiary freight forwarder?

A As I understand it, it is unrestricted, is that correct?

Q Will you answer my question to the best of your ability, please?

A I would say, yes then, we would lose some traffic if I have to answer it that way.

Q How much traffic do you anticipate of the 1,000 to 1,200 units you handle in the year, how much of that do you expect to lose if the AAACON authority is granted?

A I have no idea. It would be a hypothetical.

Q So really you don't know if you would lose any?

A I would say we could possibly lose it because I have calls now for this type of service and I recommend it to the people you have in your office in Jacksonville.

Q You feel you could work the other direction as well with Auto Trip if you were given the opportunity?

A Yes, if it was coming by freight forwarder destined to our area where he asks delivery from there, yes.

Q Do you have any Section 409 contracts with freight

J. PAUL SKIPWORTH

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hill) Please state your full name and business address.

A J. Paul Skipworth. I am the traffic manager of F. J. Boutell DriveawayCo. Inc., located in Flint, Michigan.

Q How long have you been employed by that company?

A 4½ years.

Q Briefly, what are your duties as traffic manager?

A My duties as traffic manager involve supervision of rates and the tariff participation, a certain amount of operational obligation representing my company before hearings in the Interstate Commerce Commission.

Q Is your company here in opposition both to the motor carrier and freight forwarder applications being heard?

A Yes.

Q What is the business of F. J. Boutell DriveawayCo Inc.?

A Transportation of automobiles in trucks via motor common carriage in interstate commerce.

Q Approximately how long has the company been engaged in this business?

A 52 years.

Q Does your company conduct operations pursuant to authority granted to it by this Commission?

A Yes.

Q Did you have prepared and have you brought to the hearing room a document which purports to set forth its operating rights?

A Yes.

Mr. Hill: At this time I would like to have marked for identification two exhibits, the first of which is a compilation of the carrier's operating rights.

Exam.Sutherland: It will be marked Exhibit 14.

(Protestant's Exhibit No. 14, Witness Skipworth, was marked for identification.

Mr. Hill: The next is a one page document purporting to set forth certain information as to employees and equipment and terminals of that company.

Exam.Sutherland: It will be marked Exhibit 15.

(Protestant's Exhibit No. 15, Witness Skipworth, was marked for identification.)

Q Mr. Skipworth, would you take Exhibit 14 for identification and indicate where your company holds authority for the transportation of used passenger automobiles both in driveaway and truckaway service?

A The truckaway service is indicated at the bottom of sheet 2, the underscored paragraph, starting with "automobiles, trucks, bodies --" et cetera, and then the paragraph immediately below that on the very last paragraph on the page

A Yes.

Mr. Hill: That completes the direct examination of the witness. The witness is available for cross-examination, and I offer Exhibits 14 and 15 for receipt in evidence.

Exam.Sutherland: Any objection?

Mr. Kiel: I ask that the Examiner withhold ruling until I have a chance to examine the witness.

Exam. Sutherland: We will do that.

CROSS-EXAMINATION

Q (By Mr. Kiel) As I understand your testimony in substance it is to the effect that up to this time to your knowledge you have not participated in the movement of used passenger automobiles in secondary driveaway service from a railhead; is that correct?

A Not to my knowledge.

Q Would it also be true that to your knowledge your company has not transported in a driveaway service from or to or on behalf of a freight forwarder used automobiles in a secondary service?

A Not to my immediate knowledge, no.

Q Would you tell us, sir, how many automobiles has your company transported -- how much did it transport in 1968?

A How many? How many automobiles?

Q Yes.

A I would say around 500,000.

Q

Q And of those none would be the shipments which are within the scope of the application of AAACON, namely, those which were used and which were being moved as a secondary movement from a railhead or to or from a freight forwarder on a forwarder bill of lading?

A To my knowledge, yes, that is right.

Q Now, sir, by the location of your company in Flint, Michigan, would we be correct in assuming that you are basically a hauler for Buick and General Motors of new automobiles?

A I don't know what you mean by basically.

Q Are you what is known as a captive carrier?

A No.

Q The primary traffic you handle is for General Motors and Buick?

A I would say the majority of the traffic we handle is for General Motors.

Q You have heard the term, captive carrier?

A I have and I do not consider ourselves as captive carriers.

Q Would you tell me the last time that your company transported a used passenger automobile from a point in New York City as a single unit tendered to your company to a point in New Hampshire?

Mr. Hill: I think, if the Examiner please, I would object to the question for this reason --

Mr. Kiel: I will withdraw the question.

Q If someone wanted service in this area around New York City they would call your Ridgefield office?

A Ridgefield or Port Elizabeth.

Q Have you been in contact with the persons who answer the telephone in your Ridgefield office?

A Not within the last 3 weeks.

Q Do you know in response to telephone calls made to that office that your company has been advising shippers and persons who contact them with respect to the movement of individual automobiles that the company is not in position to render a service on that type of traffic?

Mr. Hill: I want to object, if the Examiner please. There is no predicate in the record for any such question as this.

Mr. Kiel: There will be before the case is over and I would like at this point to develop whether this witness knows that to be a fact.

Exam. Sutherland: I will have the reporter read the question.

(The record was read by the reporter, as follows:

"Question: Do you know in response to telephone calls made to that office that your company has been advising shippers and persons who contact them with respect to the movement of individual automobiles that the company is not in position to render a service on that type of traffic?")

truckload is a shipment from one shipper at one location at one time and on an aggregation of various shippers traffic onto a single shipper at the convenience of the carrier, you are aware of that?

Mr. Hill: I would object to that. It is argumentative. It calls for a legal conclusion of the witness.

Mr. Kiel: I will withdraw that.

Q Would it be a fair statement that your company does not normally or regularly transport individual automobiles by truckaway service, that is used automobiles, in your operating authority? It would be a rare occasion when you would ever do that?

A Yes.

Q Woulin't it be a fact that your company does not normally transport used automobiles in a single driveaway secondary movement within this area?

A This would be a rare occasion, yes.

Q Isn't it a fact that nowhere in your operating authority are you authorized to transport baggage and personal effects of the owner of an automobile?

A Well, you have our operating authority and it reads new automobiles, new trucks, et cetera.

Q There is no reference to the transportation of baggage?

A Not in the authority, no.

Q And you don't transport baggage, do you?

A We don't hold ourselves open to transport baggage as such. No.

Q And you don't do it. In addition to not holding out to do it you don't do it; isn't that a fact?

A No, we do not transport baggage.

Mr. Kiel: I have nothing further of this witness.

Mr. Hill: A few questions on redirect.

Exam. Sutherland: Before you begin, are there any objections to the exhibits?

Mr. Kiel: No objection.

Exam. Sutherland: Exhibits 14 and 15 are received.

(Protestant's Exhibits Nos. 14 and 15, Witness Skipworth, were received in evidence.)

REDIRECT EXAMINATION

Q (By Mr. Hill) Mr. Skipworth, a moment ago in describing your commodity description you indicated you have authority for new automobiles and new trucks. With respect to the secondary traffic the word "new" is not usdd, is it?

A That is right.

Q You also have authority for used automobiles in your secondary authority, isn't that correct?

A Yes.

Q Mr. Skipworth, does your company in fact accept a tender of a single automobile if someone wants that transported by your company either in driveaway or truckaway?

PROCEEDINGS

Exam. Sutherland: The hearing will come to order.

Mr. Kiel: Mr. Bloomberg.

SYDNEY BLOOMBERG

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give your name and address.

A Sydney Bloomberg.

Q What is your residence address?

A 685 Third Avenue.

Q Is that New York, New York?

A Manhattan, yes.

Q What is your business, sir?

A I am a salesman and sales manager in Misses coats and suits.

Q Is that concern located in Manhattan, New York City?

A In New York City, Manhattan.

Q Do you own an automobile?

A Yes.

Q What type is it?

A 1967.

Q What type?

A Chevrolet.

Q What year is it?

A 1967.

Q Do you from time to time ship your automobile?

A Yes.

Q How did you first come in contact with the applicant AAACON Auto Transport?

A I saw their ads in the Times and I attend many market shows in different key cities in the United States and I called them up and asked them if they transport cars. They told me they drive cars, which did not appeal to me.

Q Subsequent to that time did a representative of the AAACON Auto Transport contact you and indicate that they had applied for authority with and through a subsidiary to provide a freight forwarder transportation which would involve the pick up of an automobile at your home, and drive it to a nearby railhead, put the car on a freight car, and carry the automobile on the freight car to a nearby city to the destination that you want it delivered, and then AAACON would drive your car to your hotel or wherever your location is?

A I told them I would be interested in that type of service but I would not be interested in a strange man driving 1,000 or 1,500 miles, whatever the arrangement might be.

Q Do you vacation in Florida?

A Occasionally, yes, occasionally.

Q Would you use this type of service to have your car brought to Florida for your use in Florida and then to be returned?

A I would use it on business trips. I have a market trip and if I should go to Florida say for the market when the center is there for coats and furs I might stay on a week but tie it in as a business and vacation period.

Q Would you tell us would all these trips leave from New York? You would leave from New York?

A New York City.

Q Would you fly to your destination?

A Yes. I always fly to my destination.

Q Do you as a sales representative carry with you or need at your sales shows the samples and other merchandise that you show?

A Yes. I need books, bulky books to outline all the buyer's merchandise men, names of stores, keep my records, and have samples with me.

Q Would it be a convenience for you to be able to carry a portion of this material in your automobile while it is being transported?

A It would be most advantageous. I could put it/in the back of my car, lock it up and leave it there and not have to drag it around with me myself.

Q Would you tell us the location of the cities at which you would attend shows?

A Yes. Detroit, Cleveland, Cincinnati, Chicago. Shows, and

I also create my own shows, go to Detroit and get all the outlying areas, suburban areas, contact the people, and have them come in and see the line or go to them to see the line.

Q Would you use your automobile for that purpose, sir?

A I would like my automobile used, yes.

Q What about Florida? You indicated a little earlier about Florida but you did not indicate you have shows there.

A Oh, yes.

Q You do?

A Yes.

Q Are there other locations you have not named that you travel to with some degree of regularity?

A Yes. Did I mention Cincinnati?

Q Yes.

A And Toledo is not a key place, usually there are five cities in all I go to, Toledo, Cincinnati, Cleveland, Dayton and Akron, five cities in Ohio.

Q Might you go to one city and then travel in your automobile to the other cities at the same time?

A Yes, if they are nearby. If we can go out in the morning and come back in the evening to see those people in the area.

Q Are there any shows which you attend in the western part of the United States further west than Chicago?

A Not too often.

Q Or in the southwest or the south other than Florida?

A No. I have gone to San Francisco but not within the past two or three years, I would say.

Q Is your market the entire United States?

A Yes. Generally.

Q Do you change the locations of your shows and the places you go to from time to time?

A Well, there are certain -- they are sometimes held in marts and sometimes in the hotels. Sometimes I can go and take them into a store if I set up an appointment at a store.

Q You indicated that you contacted AAACON. Did you ever use their service?

A No.

Q Why not?

A Well, when I saw the ad I thought that would be a good idea and it would save me time if I could get my car shipped out but when I contacted them they told me their procedure. I think they hire men not in their steady employ that would drive the car from here to Chicago and I did not like the idea of my car being banged around by someone who was not a steady chauffeur, so to say, and was not sure of the roads, and wear and tear on the car on this road; that I would not like, but if I could get it shipped by rail where it was driven from here to whatever center, I guess it is in this area, and then deliver it to my hotel after it lands in say a key city that would be advantageous.

Q Have you been advised by the applicant Auto Trip USA that it would have to consolidate a number of cars, perhaps six or seven, if it was going to be put on a trailer, 1r up to twelve and fifteen if on rail cars?

A Yes, they said they would ship it by rail if I liked and if I did not mind they would put it on a truck or a trailer, whatever you call it, the flat car.

Q If this service were available how often do you think you would have occasion to use it?

A About twice a year, I would say.

Q That would be twice a year up and back?

A Yes. Two round trips.

Q Have you ever heard of any such service being available from anyone else?

A No.

Q Have you ever read about such a service before?

A No.

Q Has anyone ever called on you or sent you advertising material indicating such a service is available?

A No, sir.

Q There is information in the record in this hearing that, for example, between the New York City area and the Miami area the charge for the proposed or the anticipated charge for

APPENDIX 3.5

the one way service from the New York area to the Miami area would be somewhere in the neighborhood of$180 or $190. Would that charge for that distance be satisfactory to you?

A Yes, because if I were to hire a car there it would be costly and for the little difference involved it would be better for me to have my own car with the samples in it and the records in it that I don't have to pack and unpack and drag them around.

Q Would you have made these same types of trips in the past -- have you gone out to these shows in the past?

A Yes.

Q How have you managed to get around when you went out without your car?

A Usually I used the phone, but then sometimes I take a local bus out there, or sometimes I hire a car out there When I say out there in the city I mean.

Q Would you prefer having your own automobile?

A I definitely would because then I don't have to pack and unpack and drag it around. I would use the service for that purpose.

Mr. Kiel: That is all.

CROSS-EXAMINATION

Q (By Mr. Hill) When did you learn of this application, Mr. Bloomberg?

A You mean the application or the AAACON company?

Mr. Kiel: May we have a short recess?

Exam. Sutherland: We will have a short recess.

(Short recess.)

Exam. Sutherland: The hearing will come to order, gentlemen.

Mr. Kiel: Mr. Sigman.

WILLIAM M. SIGMAN

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give your name and address.

A William M. Sigman, 75-31 194th Street, Flushing, New York.

Q Mr. Sigman, do you support the freight forwarder application of Auto Trip USA and the motor carrier application of AAACON Auto Transport?

A I do.

Q Did you submit on or about December 30, 1968 a statement indicating you were supporting the motor carrier application?

A I did.

Q Are you presently employed actively?

A No. I am retired since 1964.

Q Sir, do you at any time during the year live at a location other thanFlushing, New York?

A I have an apartment at Surfside, Miami Beach. I have a three year/lease down there.

Q For how long a period of time during the year do you reside in Florida?

A Approximately five months, five to six months.

Q What time of the year generally do you go down to Florida when you do go down and when do you come back?

A I send my car down about November and I come back the early part of May.

Q Do you go down about the time you send your car down?

A I generally have my car picked up about three or four days before and my car arrives a couple of days after I arrive.

Q How long have you been going to Florida for vacations?

A Since I retired I have been going down every year, but before I retired I just went down for two weeks before Christmas.

Q When you travel between New York and Florida what method of transportation do you use for yourself?

A I have my car down there and I drive around.

Q How do you get to Florida?

A By plane.

Q Do you have a wife who travels with you?

A Yes.

Q Is there any reason why you fly down rather than drive your car up and back?

A Outside of it being a long trip, approximately 1400 miles, my wife has a curvature of the spine so she can't sit too long in a car.

Q Have you ever had occasion to use the services of AAACON from or between New York and Florida?

A Well, since 1965 I have been using their service.

Q Did they indicate to you in December that they were planning and contemplating a service to provide this transportation through a subsidiar Auto Trip USA as a freight forwarder?

A When that was suggested to me I thought it was a darn good idea because it would keep my car off the road 1400 miles with me in it.

Q Or without you in it?

A Yes, that would be 2800 miles down and backj

Q What kind of car do you have?

A I have a Cadillac.

Q What year is it?

A This car now is a 1969. I just bought it about a month ago. The other car was smashed up by one of the drivers that drove the car up.

Q Thatwas when you were using AAACON?

A Yes, sir.

Q Do you consider that a normal hazard of a long trip like that?

A That is the first time it happened to me as far as having the car smashed up, about $1,500 damage.

Q You were compensated for that loss?

A Yes, I was.

Q If this service that is proposed here is not authorized would you continue to use AAACON to move your car?

A I certainly would. I have been pretty lucky up to this time except for the last trip, but the other trip took a couple of days longer but my car came back safely, but, of course, the wear and tear on it was 2800 miles.

Q Would it be one round trip a year that would be involved there between New York and Florida?

A Yes.

Q And you would have your car moved just one round trip?

A Yes.

Q And it would be approximately five months apart?

A Five or six months apart.

Q Did AAACON or Auto Trip USA advise you concerning the fact that under the proposed service the car would be picked up at your home, and taken to a rail yard at Kearny, New Jersey, and put on a rail car, and move to Miami, and then delivered by a driver to your home?

A That is what I was informed, and I thought the idea would be great, a great idea, not only for me but for everybody who is retired and who does not want to drive as much as that.

Mr. Ross: Objection.

Exam. Sutherland: I think you just have to speak for yourself, sir.

The Witness: I am sorry.

Q Did they indicate to you concerning the time element, that is, how long it would take approximately for a car to be delivered from New York to Florida or in the opposite direction?

A I did not dele into that, but I thought the service would be a good service to get the car delivered and have it delivered to my residence. That is the important part.

Q If such a service took approximately eight, nine, ten days would that be suitable?

A I'd love it.

Q In that respect were you advised that the theory of the service would be that a number of automobiles would be consolidated and loaded on a railroad car as a group that would be moving at one time?

A I am not interested in that. All I am interested in is getting my car picked up, brought down to Miami, and delivered to my door.

Q Would a cost of approximately $190 for each move be within your budget? Would you be willing to pay it?

A It is worth anything to get it down there in good condition because my car is run well and it is kept clean and it is in good condition at all times.

Q And directly would you be willing to pay $190?

A Yes, I would pay it. It is worth it. It would save the wear and tear and the risk of having it damaged.

Q In the past using AAACON approximately what was the charge?

A Approximately about $100.

Q Do you know of any other company who provides the type of service that AAACON and Auto Trip USA are proposing?

A Well, I have not checked into any other company, but I knew, seeing their ads, sofar as they have the I.C.C. license, the insurance, and the bond, it is worth it to me to pay any price to get the right service.

Q Would it be an advantage to you to have single responsibility and have Auto Trip USA, the subsidiary of AAACON, use AAACON to pick up and deliver your car?

A Well, if I have AAACON, fine, the contract, the agreement, that is what I am interested in. I want the car to be picked up and delivered to my door. That is all I want.

Q If the contract was with Auto Trip USA, the subsidiary, you would be satisfied?

A Yes, I would.

Mr. Kiel: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Hill) Mr. Sigman, was it just this past winter that your other car was smashed up?

A Yes.

Q When AAACON handled it for you?

A Yes, it was April 19th or April 18th. I just don't know when the car was smashed up, but I had to go down to the pound. The car was parked illegally by this driver and all smashed up at that time when I saw it.

Exam. Sutherland: You had to go down where?

The Witness: To the pound and pick the car up because the fellow did not have the money to take the car out,the pier.

Q Where did this happen?

A In Manhattan. In fact he smashed it into two other cars besides smashing mine up.

Q This was after the car had come back from Florida?

A Yes.

Q But before it was delivered to you?

A In other words, the driver called me up and told me the car was parked illegally by him and it was brought down to the pound, or Pier 56, I think it was, so I had to go down there because he did not have the $25 to take it out, so I went down there and saw the mess of the car and about 11 days later I get a call from the police department the car was in a wrong way heading where it smashed into two other cars.

Q This was when it was being handled for you by AAACON and one of its drivers?

A That is right.

Q Let me ask you this, if you had the service of a responsible service, a responsible motor carrier, with professional drivers whereby your car would be picked up in New York and put on a truckaway motor carrier trailer, that is, where it was not driven on the highway, but trucked away, and then delivered to you in Miami Beach at your apartment in a period of time comparable or even less than that proposed by the applicant here would you be interested in that type service?

A I am interested in service. I know my car would be taken care of in good condition and brought down to me because my car is always well serviced and always looks new and my car could run 100,000 miles and still be good.

Q You remember the type of service I described to you in my question. Would that type of service be interesting to you?

A It would be interesting as long as the car was kept off the road and brought down within eight or ten days, I would say it is a good service.

Q To the extent your car has to be driven in connection with the type of service we are talking about you would prefer having your car driven by good, reliable, professional drivers?

A Driven down?

Q No. The extent it has to be driven to get it to a motor carrier's truckaway equipment and from that equipment to the actual residence of your apartment?

A Yes, I would say it is good service, I would like that.

Q You want good, reliable drivers?

A Yes, as long as the car is kept off the road. If it is freighted down or sent down by train or even by -- as long as it gets down there without being used up 1400 miles, wear and tear.

Q But you understand there has to be a certain amount of driving of the car in both ends in what the applicant proposes?

A As far as I know. I live in Flushing, and if my car was picked up and driven to a pier or to any freight terminal it would be maybe about ten or fifteen miles, and then it would be driven down to Miami Beach to my home which would be another fifteen to twenty miles -- that is only about forty miles approximately. That certainly is not 1400 miles.

Q I understand that. But did you understand there has to be that certain amount of driving at each end of the rail? At each end of the line?

A Yes, that is all right. That is not too bad, particularly if the company is reliable, a reliable company.

Q What you want is when the car is driven at both ends you want it driven by reliable drivers?

A Yes.

Q You want to avoid what happened in Manhattan earlier this year?

A Yes. In fact this fellow got a ticket for speeding, going over 80 miles an hour. He said it cost him $30. He was caught speeding. With my car, the fastest I would go is 60, or 65, or 70 on the Sunshine Highway where they let you go 70; so this fellow was going over 80.

Q You understand that AAACON be the proposal here that you are supporting AAACON will supply drivers up here at this end in New York that will get your car from Flushing to the rail point and it might be over in New Jersey some place and they are going to supply drivers at the other end of the line to make delivery of your car, you understand that?

A That still is not 1400 miles each way.

Q You understand?

A Yes.

Q And you understand it was their driver when you had all this trouble earlier?

A Yes.

Mr. Hill; That is all.

CROSS-EXAMINATION

Q (By Mr. Davis) Are you familiar with the services ofThe Motor Convoy, Inc.?

A I have not checked into any Motor Convoy. I just thought the idea -- in fact I drove down to Miami the first time I

Q And you don't know of any reason here today why Motor Convoy could not, for example, provide the service for your shipment at railhead to your home in Miami, do you?

A I don't know of any yet. I have not checked into it, to be very frank with you. I would like it.

Mr. Davis: Thank you very much.

CROSS-EXAMINATION

Q (By Mr. Sack) Do you know that even if the application of AAACON is not granted by this Commission that AAACON could still provide the service to take your car from the Miami railhead to Surfside and from Surfside back to the Miami railhead?

A The fact that I have been using AAACON for the last four years I still have confidence that they would take my car, drive it, or bring it down by freight, whatever they want to, they could do, and deliver the car to my door. In the five years I haue been using their service I only had an accident once. Up until that time my car was brought down and delivered to my home, and I was pretty sure of that.

Exam. Sutherland: I don't know whether he's answered your question.

Mr. Sack: Do you recall the question I asked?

Exam. Sutherland: I think you have to listen to the question.

Mr. Sack: Listen very carefully to the question. Will you

JOHN GORAL

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hill) Please state your full name and business address.

A John Goral, Post Office Box 172, Bryn Mawr, Pennsylvania.

Q By what company are you employed, Mr. Goral?

A Nu-Car Carriers, Inc.

Mr. Kiel: Mr. Hill, may I ask a question? My notes show that Nu-Car is protesting AAACON's application only?

Mr. Hill: That is correct.

Q Mr. Goral, how long have you been employed by Nu-Car Carriers, Inc.?

A Approximately 17½ years.

Q What are your duties with Nu-Car?

A One of the duties that I have is responsibility for preparing and appearing -- preparing exhibits and appearing as a company witness at proceedings before this Commission and also other state regulatory bodies. I am also involved in the traffic end of the business and also with the tariffs.

Q Are you generally familiar with the operations conducted by your company on a day to day basis?

A Yes, I am.

Q Have you testified in numerous other proceedings such as this before the Interstate Commerce Commission?

A Yes.

Q What is the business of Nu-Car Carriers?

A Transportation of motor vehicles by the truckaway and driveaway methods.

Q How long has the company been engaged in this business?

A Since 1929.

Q Does the company operate pursuant to authority granted to it by this Commission?

A Yes.

Q Did you have prepared and bring to the hearing an exhibit which purports to set forth operating rights of your company?

A Yes, I have.

Mr. Hill: May we have marked for identification a multi-page document showing their operating rights?

Exam. Sutherland: Yes. It will be marked Exhibit No. 16.

(Protestant's Exhibit No. 16,
Witness Goral, was marked
for identification.)

Mr. Hill: Thank you.

Q Did you also have prepared and bring to the hearing a one page document showing in map form your company's authority to handle used automobiles in secondary movement in driveaway service?

A Yes, I have.

Mr. Hill: May we have this marked for identification.

Exam.Sutherland: It will be marked Exhibit No. 17.

it has specific authority to handle that product?

A No, I am not.

Q Have you ever, to your knowledge, during such transportation transported an automobile where knowingly there was baggage or personal effects accompanying the vehicle?

A If it was done so it was done at the shipper's risk and we were not advised that the baggage or personal effects were in the car.

Q Then would your answer be that your company has never knowingly transported or held out to transport baggage along with automobiles?

A That is right. We never held out to transport that.

Q To your knowledge, it has never transported it?

A Not knowingly, no.

Mr. Hill: May I inquire at this point? Mr. Kiel, in questioning the witness referred to some decision.

Mr. Kiel: Ace Automobile Carriers, it was a decision within the last 6 months, one of the successors of Bell Transport.

Exam. Sutherland: What is the case?

Mr. Kiel: I can't give you, it is not a printed decision, it is a mimeographed decision.

Exam. Sutherland: You gave the carrier's name.

Mr. Kiel: I believe the carrier is Ace, it is a successor to Bell Transport, the original driveaway licensed

Exam.Sutherland: Let's get on with the hearing. Go on with the cross-examination.

Q If the Commission should determine that authority is necessary and required by AAACON to transport automobiles and baggage you will agree if a shipper desires to have an automobile and baggage moved you are not authorized to provide that complete transportation, namely, the automobile and baggage if authority is required?

Mr. Hill: I object. Again we are calling for a legal conclusion of the witness.

Exam.Sutherland: Objection overruled.

Mr. Hill: There seems to be some question now about this matter.

Exam. Sutherland: Objection overruled.

A The only way I can answer that is that we advised the shippers in the past and will continue to do so in the future that we have authority to transport automobiles only.

Q The rights would speak for themselves, too, won't they?

A That is correct.

Q What is the total number of automobiles that your company transports in a year?

A I don't know whether I have that information.

Q Could you give us an estimate?

A In 1968 the total was 681,433.

Q Could you tell me, sir, what portion of those vehicles involved used passenger automobiles that were handled in secondary driveaway service involving a single tender of a single vehicle from one point to another?

A No, I cannot.

Q Did you handle any?

A Yes.

Q You don't know how many?

A No.

Q Do you have any Section 409 contracts with freight forwarders to do pick up and delivery work for them?

A No.

Q If Auto Trip USA got authority to provide service in the State of Ohio where you are authorized to operate and they called you to pick up an automobile and drive it from a point 10 miles north of Cincinnati to Cincinnati how would you provide that service?

Mr. Hill: I would object, if the Examiner please, for this reason, the applicant presently has that authority. Obviously if the applicant has that authority we are not here protesting what he already has.

Mr. Kiel: I withdraw the question.

Q Let's presuppose that the situation is in the reverse direction, that a shipment is offered to you in Cincinnati by a freight forwarder such as Auto Trip to take to a point by driveaway 10 miles from Cincinnati how would you provide

AFTERNOON SESSION

1:50 p.m.

Exam. Sutherland: We will go back on the record.

Mr. Davis: I call Mr. Padgett.

LEWIS O. PADGETT

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Davis) Will you state your name, and your company?

A My name is Lewis O. Padgett. I represent The Motor Convoy, Inc.

Q What is your address?

A 275 Convoy Drive, Atlanta, Georgia, or Post Office Box 82432.

Q What is your position with that company?

A Vice president and sales manager.

Q What are your duties?

A Among other things I solicit business for the company and have been for many years and have some other people in my department who do the same and have other duties connected with administrative duties.

Q Are you familiar with all phases of the carrier's operation?

A Yes, sir, to a reasonable extent. Yes, sir.

Q How long have you been with the company?

A I begun work there in March, 1950.

Q Prior to that were you with a governmental agency?

A Yes, sir.

fromSavannah, Georgia?

A We do. Yes, sir. Imported automobiles.

Q How do you provide that service?

A We have a terminal there and as a shipper designates a unit to be shipped we send equipment from Atlanta to Savannah to pick them up. We will have loads going out from Atlanta to various places in the southern part of Georgia, and these, of course, would go and pick them up and if we would need more equipment than that which is loaded and going into that area we would send that down empty, deadheaded.

Q And again I will ask you if the applicant under authority as a freight forwarder wanted you to perform driveaway service and needed 11 drivers in Savannah, Georgia on a certain day do you hold yourself out to provide that service?

A Yes.

Q Is that true with respect to your entire scope of operation?

A It is.

Q Do you have the figures of the traffic, car traffic which your company has handled for the first quarter of 1969?

A Yes, I do.

Q Would you give us that, please? From Miami, first.

A At Miami we delivered 9,789 units of vehicles during the first quarter of 1969.

Q How much of that would be ex-rail in your opinion?

A It would be practically all. Our movement down there is nearly all of it is ex-rail, sometimes we get a load otherwise, but it is nearly all ex-rail.

Q How about Tampa?

A Tampa we had 900 units. Jacksonville, 3701.

Q How much of the Tampa traffic would be ex-rail?

A All of it.

Q What about Jacksonville?

A That is not true of Jacksonville. Once in a while we will have an extra load. It could be a load or two of those that would be other than ex-rail, but it is so near all ex-rail that you could say it is practically all ex-rail.

Q Mr. Padgett, that would not be true with respect to Jacksonville, would it.

A No.

Q What is the situation there?

A Jacksonville a lot of imported automobiles come in there so we do haul the load and the major portion of the Jacksonville traffic would be imported automobiles.

Q Can you give us any estimate how much that import is?

A I'd say at least two-thirds of it.

Q By the way, why did you check the figures for those three Florida points and you do not have the same figures available for other specific points?

A I thought Florida was one of the main points of interest in this application.

figures, namely, the number of automobiles you had handled in January, 1969, and you gave us some information in this proceeding? Isn't it a fact that the information which you gave us in this proceeding represents the handling of automobiles in truckaway service only from Miami, Tampa and Jacksonville?

A I did not have a record of what was truckaway and what was driveaway, but I would say that any driveaway in it would be a very limited quantity.

Q Do you know of any?

A I don't know of any. No, sir.

Q Out of the 125,000 vehicles transported in the first quarter of 1969 by your company were they all automobiles?

A No. Automobiles and trucks.

Q What portion of your total tonnage is represented by automobile traffic?

A Well, I'd say I'd have to guess at it. I'd say 80 to 85 percent would be automobiles and 15 percent maybe trucks. Maybe 20 percent trucks, 15, something along there. The great majority of it would be automobiles.

Q Let's take the 80 to 85 percent figure of automobiles, will you tell me what percentage, if any, represented the movement of used passenger automobiles in driveaway service in secondary movement?

A No, I don't have any figures on that.

Q Did you handle any that you know of?

A Yes, sir. We handled them in Florida.

Q When was the last time you have any knowledge, of your own independent knowledge, that you handled a used automobile in a secondary driveaway service?

A I could not say.

Q As a matter of fact, do you ever recall handling a single automobile in a driveaway service, a used automobile, not five or ten at one time, but one vehicle?

A Yes.

Q But you don't remember when that occurred?

A No, I could not give you a date on that.

Q May we conclude that is not really a substantial portion of your business?

A A major portion of our business is truckaway for sure, but we do quite a little driveaway.

Q But a very little bit of used automobiles in driveaway service?

A Well, I'd say in the transportation of automobiles in trucks that the overwhelming majority of those being transported are new.

Q And, in fact, if we went down the line of the origin points of the ex-rail traffic that you gave us, for example, Atlanta, Georgia --

Mr. Kiel: Strike that.

Q Flint, Michigan, Lansing, Michigan, and the other Michigan points, wouldn't they all be places where new cars are produced and which involves actually the handling of new cars by your company?

A That is right. Yes.

Q If we went into Wisconsin, Ohio and Kentucky and the other states they all again would be new car traffic of the major manufacturers?

A It would not be exactly all, but it is nearly all, the bigger portion of it.

Q This ex-rail traffic that you told us about consists of all new automobiles, doesn't it?

A No. We have some -- these manufacturers, they will ship sometimes their company used cars and ship them out to be distributed another place, and the cars that they have repossessed, maybe from rental agencies, and so forth, and we move them. We move them the same as automobiles, whether it is new or used or what not.

Q What we are talking about insofar as used automobiles are concerned would be those shipped to you by a manufacturer?

A Yes.

Q Would you look at Exhibit 20, please?

A Yes.

Q I have noted that in every terminal except your main office terminal that you have more tractors than you have

Exam. Sutherland: Yes. Mr. Ross, are you ready?

Mr. Ross: I think I am. I would like to call Mr. Sohl, please.

JOHN F. SOHL

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ross) State your full name for the record, please.

A John F. Sohl.

Q What is your business address?

A 343 South Dearborn Street, in Chicago.

Q By what company are you employed or affiliated with?

A Auto Driveaway Company.

Q What position do you hold with that company?

A I am president.

Mr. Kiel: Mr. Sohl, I can hardly hear you. Will you please speak up a little?

Q Did I understand you to say you are president of the company?

A Yes.

Q Is that company a protestant in both the motor carrier and the freight forwarder applications being heard here today?

A Yes.

Mr. Ross: Mr. Examiner, I have distributed a numbef of exhibits I would like to have marked for identification, the first of which is a single sheet exhibit, bearing on

Exam. Sutherland: All right. We will mark it as Exhibit No. 26.

(Applicant's Exhibit No. 26,
Counsel Kiel, was marked
for identification.)

Mr. Ross: Since it has been marked, I understand Mr. Kiel will provide copies for all counsel?

Mr. Kiel: Yes.

Q As a matter of fact, Mr. Sohl --

Exam. Sutherland: Is this the only copy you have?

Mr. Kiel: I have copies here, but I emptied my briefcase out because I did not think it was going to become pertinent to this proceeding. However, I have about 20 copies, but they are not with me today.

Exam.Sutherland: We will have to give this to the reporter.

Mr. Kiel: Yes. I will put them in the mail if it is received.

Q Isn't it a fact that in addition to going to Montreal and points in the Province of Quebec without authority such as is held by the applicant AAACON that you have also operated between points in the white states shown on your map, Exhibit 22, and that the Commission brought charges and you paid a fine in connection with such unauthorized operations?

Mr. Ross: Mr. Examiner, I will btipulate with counsel that a forfeiture was agreed to without any agreement on the part of the protestant here that there was anything wrong, any wrong doing. It was strictly a settlement without any agreement as to violation, just as is handled by me in many situations and I don't think anything further with regard to that is pertinent in this proceeding.

Mr. Kiel: I appreciate the stipulation, Mr. Examiner, and I thank Mr. Ross.

Q Mr. Witness, will you tell me did you in fact operate between points in the United States for which you do not hold authority since you were granted the authority in Exhibit 21?

Mr. Ross: Mr. Examiner, I again object to that question because it involves a matter thatwas the subject of an out of court settlement between the Interstate Commerce Commission and this protestant.

Exam. Sutherland: Mr. Kiel, is there any point in going into this?

Mr. Kiel: Yes. This company is quite concerned about the possibility of loss of traffic. I don't know. He may be concerned we are going to take traffic away from him that he should not be handling in any event, and I think that is very pertinent.

Mr. Ross: I don't think it is pertinent. The protestant's violation i£, of course, not in issue here. Insofar as the traffic subject to diversion the traffic obviously is only that traffic for which we hold authority and we make no claim for diversion of traffic for which we do not hold authority except, of course, we have placed on this record the status of the pending application under which authority has been -- the decision has been rendered by the full Commission in which additional authority is granted.

Exam. Sutherland: Does that mean if there is on this Exhibit 25 here where it might be between one white state and another you are not claiming diversion there?

Mr. Ross: That would not be subject to diversion if there is any such instance and I don't think there are.

Exam. Sutherland: Is there any point in going any further into it?

Mr. Kiel: Except this all involves the credibility of the witness. I don't think anything further is necessary since counsel has apparently agreed that they are not going to cry possible diversion of traffic which they have been handling without authority.

Exam. Sutherland: Then let's go on to something else.

Q How long has this office in Dallas, Texas been open?

A We had an office in Dallas, Texas that closed in February and then opened again two weeks ago Monday.

Q What is the address of that office?

A 3105 -- I believe it is Grand. 3105 Grand.

APPENDIX 3 1/2

Q Would it be a fair statement that this document says, your automobile delivered anywhere?

A Yes.

Q And do you in fact deliver automobiles anywhere, for example, from Georgia to North Dakota?

A No. As a matter of fact we turned one down last week from Wyoming to Arkansas.

Q Then this represantation is not correct, is it?

A It is to about 75 percent of the population of the United States. There is only 25 percent of the population that is not affected by this.

Q Would you go down Exhibit 24 and tell me, sir, which of the offices are agency offices and which are employee offices?

A Everyone is an agency with the exception of Chicago.

Q What about Milwaukee, Wisconsin?

A That is an agency.

Q Is that true with respect to the so-called Driveaway Service division?

A Yes.

Q And they would be agency offices, too?

A Yes.

Q And is this document used for any purpose other than hearings? Is this used in your organization?

A Not this document.

Q Or a similar document with the office listings?

(The record was read by the reporter as follows:

"Question: When the number of new cars would be extremely heavy?")

Q Isn't that so?

A Yes, it is heavy six - seven months of the year.

Q Did you hear the testimony of Mr. Paul Zola that the applicant freight forwarder would hold out to the public a through service and would assume responsibility and liability to the public for the entire movement and for the vehicle and its contents?

A Yes.

Q As a matter of fact isn't it true that you do not hold out to the public responsibility or liability for baggage or personal effects?

A No. We have a released rate on file with the Commission right now.

Q Every document in your suitcase and what I have in front of me specifically says, will you agree, that you do not assume responsibility or liability for any property carried on the vehicle, baggage or personal effects?

A Where?

Q Shall I read it for you specifically?

A Yes.

Q We can assume no liability for luggage -- doesn't your document say those words?

A It did up until recently and it is being printed right now because we put the released rate in which is identical to your released rate.

Q As a matter of fact, at the present time do you use these same shipping orders that I have and you have here on the table?

A This week, yes.

Q And you have used them in the past?

A Yes.

Q Don't they say you assume no liability for luggage?

A Yes, and we have paid the claims, too.

Q In addition to that isn't it a fact that the documents also indicate that the only liability for your company if the vehicle should be in an accident and is destroyed, damaged, is to the extent of the owner's deductible amount of the collision insurance carried by the owner on the vehicle?

A Yes. You see we are doing that the same as AAACON is saying they tell the customers it is all excess when they are involved in the accident. They don't cover any insurance except excess. We are doing the same thing AAACON is doing.

Q With respect to that isn't it a fact that this was gone into in some detail at the Dependable hearing when you testified and you indicated you had been contacted by the Commission and were told that the arrangement you had was and I have nothing further.

Exam. Sutherland: It will be so stipulated. Anything further?

Mr. Kiel: Nothing further.

Exam. Sutherland: You may be excused.

(Witness excused.)

Mr. Kiel: I call Mr. Paul Zola for a few questions.

PAUL ALAN ZOLA

Recalled, in Rebuttal, Resumed his testimony, as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Mr. Zola, Mr. Sohl testified with respect to what he understood at least to be AAACON's holding out to the public. You testified on direct examination, you indicated that you would assume full responsibility as a motor common carrier as you do now for AAACON and the freight forwarder would assume similar total responsibility for the shipments tendered to it. Will you tell us did you hear Mr. Sohl's testimony with respect to what he thought your holding out, and your insurance, responsibility was?

A I did.

Q Will you tell us what it actually is?

A Mr. Sohl indicated that his opinion of our company's insurance program was that we carried excess insurance only. This statement is wholly without foundation in fact. We carry not excess insurance but primary insurance as well as we are required to do by the Interstate Commerce Act.

Q Do you advise your customer as the information in Mr. Sohl's documents indicated he is only responsible for the amount of the deductible loss and that he is not responsible for the luggage loss?

A We most certainly do not.

Q You hold yourself responsible and honor legitimate claims for any liability you might have as a common carrier?

A We do.

Q In connection with the freight forwarder proceeding did you undertake to make an investigation to determine what services were available to the shipper of a single automobile by persons who advertise their services as automobile transporters in the yellow pages of the Manhattan telephone book?

A I did.

Mr. Hill: I object. This obviously, I think it was touched on in the initial testimony of this witness and it is not a proper rebuttal type testimony.

Exam. Sutherland: I am wondering about that, Mr. Kiel. What is this rebutting?

Mr. Kiel: This is rebutting the holding out of the witnesses with respect to their availability of service. We had a lot of testimony about what people would do if people offered them traffic.

Exam. Sutherland: What witnesses are you referring to?

Mr. Kiel: A number of them, Boutell, Nu-Car Carrier, Sober, and so forth, and we in the process of checking out what services were available over an extended period of time made certain determinations which are contrary to what some of the witnesses testified they were holding out. Mr. Zola contacted all of these carriers and attempted to find out what services they held out to provide from New York to a shipper of a single automobile and I think it is proper rebuttal testimony.

Mr. Hill; It is not proper, if the Examiner please, and we are going to get into a hearsay situation and it will be obvious that thecalls were made simply to test companies and not with any tender of traffic and if this was the sort of thing he wanted to present in support of his proposal as a freight forwarder it should have been done at the time they put their initial testimony in so that our witnesses obviously could have made an investigation. This certainly is unfair now to come in after our witnesses have testified. He obviously had the information at the time he testified earlier and could have put it in at that time.

Exam. Sutherland: I am inclined to agree with you. After these witnesses have left.

Mr. Kiel: These witnesses were not the people who were contacted. I asked them specifically with respect to people in their employ and had a foundation for putting in contrary evidence. There was no purpose to put in evidence with respect to carriers who were or were not parties to this proceeding unless they contended that the facts were a certain way. There would be no purpose in saying that a carrier was not holding out service in direct examination if they had no intention of testifying that they were holding out such service. It would be a fruitless exercise, but we are attempting now, and feel it is proper to establish that since they held out at this hearing that they were offering this service to show when actually someone contacted their offices responsible people who are employed there and who are acknowledged by the witnesses, in fact advised a person calling for an inquiry concerning their services, whether they would be available, was told something different from what the witnesses said they were holding out.

Exam. Sutherland: I think, Mr. Kiel, that if this type of evidence is going to be presented I agree with Mr. Hill that it should have been part of the proposal that they made these calls and found this out, but here we have a situation where after these witnesses have left --

The Witness: Mr. Hearing Examiner --

Exam. Sutherland: -- they have no chance that I can see of getting sur-rebuttal to dispute any of this.

Mr. Hill: Not only that, it would be strictly a self-serving act on the part of this applicant to do this. We had witnesses in here representing the shipping public, and I examined them and asked them what they had done, and if they had called and made inquiry, fine, then we could have responded when our time came and put in our evidence with respect to that, but to have a representative of the applicant do this in an obvious attempt to test these people for the purpose of the hearing only and then try to put it in after we completed our presentation, I think that is highly improper. I have never seen this attempted before.

Mr. Kiel: All counsel were advised early in the day that I expected I might have an intention to put in rebuttal testimony. They were all advised and all forewarned. If I had indicated I did not expect to put in any such rebuttal testimony and they had left then I would say in fairness I was overstepping.

Exam. Sutherland: I am almost at the point right now of having a continued hearing inWashington to give them a chance for sur-rebuttal.

Mr. Hill: I will ask for that if this will happen.

Mr. Kiel: That is perfectly agreeable if the Examiner thinks it necessary.

Exam. Sutherland: Because I don't think it right to have this testimony in with these gentlemen not having any chance to come in on sur-rebuttal.

The Witness: As a party may I be heard on this because this exact matter was part of my direct testimony?

Mr. Hill: I don't think it is proper for the witness to enter into argument.

Mr. Ewald: This is not proper rebuttal evidence. This is evidence that could have been put in by his witness and preferably the shipper witnesses. They had two days on the witness stand.

Exam. Sutherland: I will sustain Mr. Hill's objection and your objection to this and if the applicant wants to ask for a continued hearing to do this he can do so, but I don't think it is proper.

Mr. Kiel: I abide by your ruling, of course, but at this point I would like, therefore, to make an offer of proof.

Exam. Sutherland: All right.

Mr. Kiel: That if Mr. Paul Zola would have testified if he had been given an opportunity that on May 20, 1969 he checked all of the carriers listed in the yellow pages in the Manhattan telephone directories in order to determine' the availability of any carrier in the business of moving a single automobile by truck through the United States. He would have testified that he obtained the following results: (1), he called Arco Auto Carrier, telephone number DI 9-0970, and was advised that that carrier does not transport automobiles to Florida or California; (2), that he contacted

Auto Transport, Inc., HI 6-9191, and was advised that it does not do that sort of hauling and when asked he was advised that the person who answered the telephone believed there was no suchcarrier in this area; (3),he called Boutell, LO 4-1491, and was advised that that company only delivers cars locally and that they are only new cars; (4) he called New York Auto Conveyors, PL 7-0698, and they advised they don't do this type of work; (5), he contacted Howard Sober, Worth 2-0321, and was advised by Barbara Pilate that they had no truck service available on individual automobiles and that the cost for such a shipment to California, for example, would be as much as $1,000; (6), he contacted Nu-Car Carriers, area code 201-287-1900, and was advised that that carrier can only take six automobiles at a time and cannot consolidate a load and that the shipper must tender the six vehicles at a time. Mr. Clark was the person who he spoke with.

That is the offifer of proof. I have no further questions of this witness.

Exam. Sutherland: Mr. Hill, do you have any further questions?

Mr. Hill: No. In lieu of the fact that my objection was sustained, since this was an offer of proof I have no questions.

Mr. Ewald: For the same reason, no questions.

Exam. Sutherland: You may be excused.

(Witness excused.)

Mr. Kiel: I have no further rebuttal testimony, Mr. Examiner.

Exam. Sutherland: Mr. Kiel, it is my understanding you do not desire to file a brief?

Mr. Kiel: No, I don't think there is anything that requires a brief in this.

Mr. Hill: I would like to file a brief and request an opportunity to do so. I believe a number of legal questions have been raised with respect to the type service to be provided and what can be done now by the applicant and what it proposes to do, and there are a number of things that I think could be well covered in a brief that might be helpful. I ask permission to have the brief.

Mr. Ewald: I join with Mr. Hill! The applicant has brought forth certain theories and legal matters that I think should be looked into in a brief.

Mr. Hill: I would ask we be allowed to brief any matter involved in this proceeding.

Exam. Sutherland: Then I guess we'd better fix a date for briefs.

Mr. Kiel: May I suggest a date that appears to be the maximum time that the Examinee can authorize a brief. It would be approximately September 22nd, which would be a

INTERSTATE COMMERCE COMMISSION

Served JANUARY 2, 1970

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions.

Any new operation to be authorized by the recommended order herein if it becomes effective may not be commenced until such time as the certificate, permit, or license has actually been issued. The certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice to that effect, signed by the Secretary of the Commission, has been received.

No. FF-359[1]

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION

Decided ____________________________

1. In No. FF-359, proposed freight forwarder service found shown to be consistent with the public interest and the national transportation policy. Issuance of a permit approved upon compliance by applicant with certain conditions.

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[1] This proceeding embraces No. MC-125808 (Sub-No. 2) AAACON Auto Transport, Inc., Extension- Driveaway for Prior Rail Movements.

2. In No. MC-125808 (Sub-No. 2) public convenience and necessity found to require amendment of the existing certificate held by applicant in No. MC-125808 (Sub-No. 1). Issuance of an amended certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

Morton E. Keil for applicants.

Edward M. Alfano, Wilmer B. Hill, Eugene C. Ewald and Harry Ross for protestants in both proceedings.

Martin Sack for protestant in No. MC-125808 (Sub-No. 2).

Thomas D. Shea for protestants in No. FF-359.

Eugene C. Ewald for interveners in No. FF-359.

Bill R. Davis for intervener in No. MC-125808 (Sub-No. 2).

Harry Ross for intervener in No. MC-125808 (Sub-No. 2).

REPORT AND ORDER

RECOMMENDED BY DONALD R. SUTHERLAND, HEARING EXAMINER

By application No. FF-359, filed December 11, 1968, as amended, Auto Trip USA, Inc., herein called, Auto Trip, of New York, N. Y., seeks a permit under section 410 of the Interstate Commerce Act authorizing operation as a freight forwarder, in interstate commerce, through the use of facilities of common carriers by railroad, express, water, or motor vehicle in the transportation of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States. The application is opposed by Automobile Transport, Inc., Auto Driveaway Company, Boutell Driveaway Co., Inc., Dealers Transit, Inc., Dependable Car Travel Service, Inc., Kenosha Auto Transport Corporation, National Automobile Transporters Association and Howard Sober, Inc., herein called Automobile Transport, Auto Driveaway, Boutell, Dealers Transit, Dependable, Kenosha Transport, Transporters Association and Sober, respectively. Automobile Transport, Dealers Transit, Kenosha Transport and Transporters Association, were permitted to intervene at the hearing. Acme Fast Freight, Inc., International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co., Inc., and Universal Carloading & Distributing Co., Inc., withdrew their protests when the application was amended to eliminate reference to the use of air facilities and when the word "used" was inserted to modify "sporting equipment." Also, the protest of M & G Convoy, Inc., to the freight forwarder application was withdrawn.

By application No. MC-125808 (Sub-No. 2), filed December 26, 1968, AAACON Auto Transport, Inc., herein called Triple A[2], of New York, N. Y., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, with or without baggage, personal effects and sporting equipment, in driveaway service, in secondary movements, between points in the United States restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having prior movement by rail. The application is opposed by Baker Driveaway Company, Gate City Transport Company, M & G Convoy, Inc., The Motor Convoy, Inc., National Trucking Company, Nu-Car Carriers, Inc., Square Deal Cartage Co., and Insured Transporters, Inc., herein called Baker, Gate Transport, M & G, Motor Convoy, National Trucking, Nu-Car, Square Deal, and Insured Transporters, respectively, and also by Auto Driveaway, Automobile Transport, Boutell, Dealers Transit, Dependable, Kenosha Transport, Transporters Association, and Sober. Insured Transporters and Motor Convoy were permitted to intervene in this proceeding by order dated March 25, 1969. Automobile Transport, Dealers Transit, Kenosha Transport and Transporters Association were permitted to intervene at the hearing.

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[2] Triple A is the sole stockholder in Auto Trip. Both corporations have common officers and directors. Irving Zola is president, Paul Zola, vice-president-secretary; and Ralph Zola, vice-president-treasurer of each corporation. Each of these officers is a stockholder in Triple A.

The applications were referred to the examiner for hearing and the recommendation of appropriate orders thereon. Hearing in these proceedings was held on August 4, 5, and 6, 1969, at New York, N. Y., on a consolidated record. Briefs have been filed by applicants and by the opposing parties.

Triple A holds a certificate in No. MC-125803 (Sub-No. 1). issued December 23, 1966, which authorizes irregular-route transportation of used passenger automobiles, in driveaway service, in secondary movements, with or without baggage, personal effects and sporting equipment, between points in the United States, including Alaska and excluding Hawaii, subject to the following conditions: (1) authority is restricted against the transportation of any traffic (a) having a prior movement by rail or water, (b) moving on government bills of lading, or (c) moving to automobile dealers, and (2) such authority is subject to the condition that the Commission reserves the right to impose thereon in the future such terms, conditions or limitations as it may find necessary in order to insure that the service authorized is performed in conformity with the Commission's safety regulations.

With respect to the restriction "prior movement by rail" contained in the Sub 1 certificate, applicant has published a tariff [3] and presently holds out to provide a motor carrier transportation service under such certificate using substituted rail service with respect to certain specified points. It is Triple A's position that the restriction against transportation of shipments having a prior movement by rail does not apply when it has used substituted service and at the end of the rail portion of the substituted service it moves the used automobiles to their destinations. Triple A cites National Auto Transporters Assn. - Declaratory Order, herein called the NATA case, 91 M.C.C. 395, 410 to sustain its position. In that proceeding a ruling was sought as to whether a motor carrier holding initial authority from A to D could transport traffic to B, a non-service points intermediate to D, load it on a rail flatcar, for handling in TOFC or piggyback service to C, another non-service point intermediate to D, where it would take possession of the shipment and move it to destination, without first obtaining specific authority either to serve B and C or to operate from C to D. In the NATA case it was stated that the use of TOFC plan I by common and contract carrier holders of irregular route initial authority, under the circumstances discussed in the report, is merely a substitution of rail for motor service, does not involve an interchange requiring point-to-point operating authority, and in no way violates the present interpretation of Administrative Ruling No. 75, and that a motor carrier holding irregular route initial authority between points A and D needs no additional authority to serve rail intermediate points B and C in performing motor-rail-motor through service from A to D. It was concluded in that proceeding that the transportation of new automobiles in an initial driveway movement from a manufacturing point to a rail point for the purpose of a further movement by rail in multi-level rail cars under the circumstances described therein did not destroy the initial nature of the movement.

Although prior to the hearing in the instant proceedings Triple A had not actually used substituted rail service, it recently as previous indicated, has filed a tariff covering such operation between certain points. The type of service proposed in the extension application herein by Triple A also includes the pickup of used automobiles using driveaway service and moving them to a freight forwarding assembly point, from which they would be shipped by the freight forwarder using water, rail or motor service; and at the end of the movement, at the distribution point of the freight forwarder, Triple A would make deliveries under its driveaway authority. If the freight forwarder uses a rail carrier, Triple A is apprehensive that the restriction in its Sub 1 certificate against prior movement by rail might be construed as barring it from performing driveaway service from the rail destination breakbulk point to the consignee delivery location. Although Triple A believes it would be performing transportation for the freight forwarder in such circumstances, it seeks to avoid any question concerning the Sub 1 authority and has inserted the wording "restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading" in the extension application. In dealing with the public, Triple A receives inquiries whether it can move used automobiles by utilizing rail and water carrier service as well as by motor transportation, including truckaway service.

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[3] The evidence indicates that Triple A has filed Tariff No. MF-I.C.C. No. 5. Reference to that Tariff shows a rule thereunder on original Page 8A providing for substitution of service as follows: "(a) unless the shipper direct that rail service shall not be utilized, carrier may, at its option, substitute rail service between the points and via the rail carriers shown, for its actually available services via highways for which carrier has operating rights as a motor common carrier." In the (b) part of Rule 25 in that tariff Triple A lists the points between which rail service will be utilized as Miami, on the one hand, and, on the other, Boston, Mass., Philadelphia, Pa., Washington, D.C., and Little Ferry, N.J. The rail carriers shown to be utilized under the Tariff are Penn-Central Transportation Company, Richmond, Fredericksburg and Potomac Railroad Co., and Seaboard Coast Line Railroad Company.

The principal or home office of Triple A is located in New York City, and it has branch office locations in about 55 cities. Call stations for telephone answering service are located in 6 cities. The branch offices are operated by agents, and the majority of the agents employ certain persons on a full or part-time basis to aid them in performing service for Triple A. These employees are used rarely for long haul over-the-road driving. They are used occasionally to pickup used automobiles at the origins designated by the shippers. Most of the long haul over-the-road driving of the used automobiles is performed by the casual-type drivers. These casual drivers are used only after they have been screened carefully. Medical examinations of such drivers are required, and Triple A conforms in this respect to applicable Department of Transportation regulations, and each driver is required to have an operator's permit to drive in the State where he lives. Auto Trip also would use the above described office facilities of Triple A if it obtains freight forwarder authority. Triple A will continue providing long-haul driveaway by motor transportation for those car owners that prefer this type of over-the-road operation. As hereinafter indicated, the price by driveaway all the way from origin to destination would be less than by motor-rail-motor, and in some instances car owners would prefer driveaway all the way by motor for this reason. Also, driveaway all the way by motor, in some instances, may offer quicker delivery.

Triple A offered a traffic exhibit showing that it transported about 2,124 used passenger automobiles in driveaway service from June 1 through July 15, 1969. The District of Columbia and 49 States, including Alaska, are listed on the exhibit, and Wyoming is the only State in which Triple A did not originate or receive cars during that period. No rail transportation was used in substitution of motor carrier service on these shipments. Although Triple A has not moved used automobiles to dealers or traffic moving on government bills of lading, it apparently would participate in such traffic if the application herein was granted as sought; and, as indicated, it would be able to move used automobiles from the distribution points to which they were transported by rail. The evidence indicates that Triple A has not performed any service for a freight forwarder in the past.

In 1968 Triple A had operating revenue of slightly in excess of 1 million dollars, and a net profit of about $140,000. As of December 31, 1968 it had total assets of $226,533 and total liabilities of $77,257. Its total capital at that time was $149,275, including $142,691 in undistributed profits.

In the freight forwarding service, Auto Trip proposes to hold out its service to the public generally. The primary shippers are expected to be individual automobile owners and small corporate business concerns such as car leasing companies and finance companies, banks, insurance companies and industries that require their company used automobiles moved.

Auto Trip proposes to consolidate used automobiles at a single point. The automobiles would be moved to the assembly point by the car owners or their representatives or by common carrier, and Auto Trip would, as a freight forwarder, tender the automobiles to an "underlying" carrier for movement to a distribution point where the vehicles would be driven away in much the same manner as they came to the origin assembly point. All cities in the United States would be potential assembly and break-bulk points. Auto Trip will assume responsibility for the transportation from origin to destination and will use the uniform straight bill of lading as published in the National Motor Freight Classification. With respect to the term "underlying" carrier, Auto Trip will use all modes of transportation subject to the act to perform the line-haul service, including motor carriers authorized to transport used automobiles in truckaway service. Under freight forwarding authority Auto Trip would be able to consolidate used-automobile shipments and in using truckaway service, obtain a truckload rate. It would also use a water carrier that could barge 20 to 30 automobiles at one time, if such service is available. With respect to pickup and delivery service at origins and destinations, Triple A would be used basically for the driveaway involved. It is not likely that casual drivers would be used by Triple A in performing such pickup and delivery service, and that employees of Triple A or its agents would be used. In travel by driveaway to origins and from destinations Auto Trip would use Triple A to move the cars as far as the circumstances required in making the necessary pickups and deliveries. Auto Trip would use other automobile carriers as well as Triple A for driveaway service and delivery.

In filing the application, Auto Trip points out certain advantages of being able to provide freight forwarding service, and certain evidence was offered relating to these claimed advantages. Casual drivers are not always available in sufficient numbers to move automobiles as fast as the customers desire, and in some instances it is difficult to obtain casual drivers where the automobiles are destined to small towns. This shortage of casual drivers occurs during certain peak periods when a large volume of cars are tendered for shipment, and delays are encountered in making deliveries. By operating as a freight forwarder Auto Trip believes it can offer car owners an "alternate"service and give them some assurance on delivery dates when the automobiles will arrive in the respective destination areas involved. It will meet requests for service by persons who prefer their cars to be carried on the long hauls rather than driven, and reference is made to the possibility of eliminating normal road hazards and wear and tear caused by driving automobiles long distances.

In providing freight forwarding service by rail Auto Trip plans to use Tri-level and bi-level cars. Tri-level equipment would be used most of the time, when available, because 12 to 15 automobiles can be loaded on one of these rail cars. Eight to ten automobiles can be loaded on a bi-level car. In connection with such rail transportation, Auto Trip indicates that there are business concerns at most major railheads which are engaged in loading and unloading service involved in moving automobiles on and off multi-level rail cars. It is estimated that this on-and-off service would total about $5 per automobile. In some instances Auto Trip would use the storage yards now adjacent to railheads to assemble its automobiles. The shippers, if they desire, would be permitted by Auto Trip to pickup or deliver their automobiles at such assembly points.

In addition to the loading and unloading charges, Auto Trip would carry insurance on each automobile, and there would be certain overhead and administrative expenses. The pickup and delivery charges would be separate. When Triple A picks up automobiles presently, the charges for such service is based on $4 per hour, plus the cost of transportation for the driver from and to the office. Auto Trip lists the underlying rail freight charges for transporting carloads of used automobiles on tri-level cars. For example, the charge on a carload from New York City to Tampa, Fla., is shown as $1135; New York City to Miami, Fla., $1290; New York City to Chicago, $864; Chicago, Ill., to Dallas, Tex., $777; San Francisco, Calif., to Kearny-Little Ferry, N. J., $2883; and from New York City to Los Angeles or San Francisco $2735. Auto Trip would hold out to the public that automobiles dispatched from New York City by rail would reach Miami in 7 days. The shipper using the freight forwarding operation would pay a single charge for the service performed. Auto Trip lists the Tariff authorities covering such movements. Auto Trip's vice president has discussed the availability of multi-level cars with representatives of certain railroads, including the Seaboard Coast Line, and has been assured that multi-level rail cars are available. Other railroads contacted were Penn Central Transportation Company, Chesapeake and Ohio Railway and Santa Fe Railroad.

Triple A, in providing driveaway service presently, from New York City to Tampa, charges $99 for the over-the-road haul by casual drivers; and the rate from New York City to a California destination is $150. The use of line haul multi-level rail car service, however, will result in higher over-all charges to the shipper of each automobile. It is estimated for example, that the freight forwarding charge would be about $180 on an automobile moved from New York City to Hollywood, Fla., depending somewhat on the motor car involved. This charge would include the transportation involved to the assembly origin point and from the distribution point to final destination. Auto Trip's vice president believes there is enough traffic of the type involved between New York City and Miami to justify the described freight forwarding service. It would use rail in moving automobiles to and from other points, whenever the volume justified such transportation. Normally, it would hold the automobiles at the assembly point until it accumulated enough for a carload.

Auto Trip was formed in 1968. Its balance sheet as of July 31, 1969 lists assets of $11,100, most of which was cash. On the liability side, capital stock of $10 is listed along with the capital surplus of $11,090.

SHIPPER EVIDENCE

Alexander's Rent-A-Car, herein called Alexander or shipper, is engaged in renting of automobiles on a daily, weekly and monthly basis. At time of hearing it had a fleet of about 3,500 automobiles, and operated branch offices at 14 locations in and near New York City, 3 locations in and near Philadelphia, Pa., and 2 locations in and near Boston, Mass. Alexander leases automobiles from Ford Motor Company, General Motors Corporation and Chrysler Corporation. Normally, the automobiles obtained from these manufacturers are used by Alexander for about 6 months. At the end of the 6 months, Alexander endeavors to have all the cars it leases returned to New York City, including those located at Boston, Philadelphia and the other branch offices, so that they can be moved to certain points or depots nearby designated by the manufacturers as receiving locations. In some instances, when a leased automobile is in a distant State when the 6-month leasing agreement on a particular car is near expiration, Alexander may request permission from the manufacturer to move such automobile to the nearest depot instead of returing it to New York City; and the nearest depot might be Detroit, Mich., or Los Angeles, Calif. A leased automobile, at the end of the leasing period, might be anywhere in the United States.

During the usual 6-month leasing period some of the automobiles breakdown in transit at various points beyond New York while being operated by and under rental to Alexander's customers. If the repairs involved are of the type still under the car-maker's warranty the manufacturer will pay for the work. On these occassions, Alexander arranges for transportation of the repaired automobiles back to New York City, because its customers usually do not desire to wait until the automobiles they rent are repaired. If the car involved is located at a point not too far from New York City, Alexander in some instances uses its own employees to drive the vehicle back. If it is located at a more distant point, it normally has used common carrier driveaway service. Some of the automobiles under rental are involved in collisions at various points in the United States. If the damage to an automobile is not so great as to exclude restoration, Alexander arranges for its return to New York City after the necessary repairs are made. Occasionally, an automobile is so badly wrecked that Alexander arranges to sell it in the vicinity of the collision rather than have it repaired. Return service to New York City is required also when some of Alexander's leased cars are stolen, or when the leasee is arrested. Some of the automobiles are returned to Alexander's other branches outside New York City.

Alexander supports both applications. It points to the fact that on some occasions it would be advantageous to have used automobiles carried back to New York City rather than driven back. On breakdowns, mechanical failures or collisions, it would like to have alternate rail or truckaway service available for the long hauls. An automobile involved in a breakdown or collision could be repaired partially in a local garage near the point of breakdown or collision so that the car could be driven to a railhead assembly location and loaded on a rail car destined to a point in or near New York City, Boston and Philadelphia. At time of hearing Alexander had 10 to 15 automobiles in repair shops at various points in the United States. Some of the automobiles rented by Alexander are expensive models on which it charges a daily rental of $16, plus 16 cents per mile. One half to three quarters percent of the fleet of cars is leased on a daily-rental basis. The collisions, on a weekly basis, outside New York City, Boston and Philadelphia, can range from 3 to 10. Most of the breakdowns involved occur in the States of New York, New Jersey, Massachusetts and Pennsylvania; and the returns from these States usually are handled by Alexander's own employees in driveaway. On the long hauls, however, Alexander apparently believes that it would be safer to return a car by using rail as proposed rather than have it driven all the way back, and on some occasions would prefer to use such service even though the transportation would be more costly. In some instances Alexander believes it is unwise to use driveaway service on cars that have been repaired. It is aware that use of rail to return a car might involve driving it several hundred miles to reach a railhead assembly point. It also would like to have the described freight forwarding service available on those occasions when it might decide to ship a car back by motor common carrier truckaway service. It has used truckaway on at least one occasion from New York to Boston when the Boston office needed a considerable number of additional automobiles in a hurry. It has never required any truckaway service from points in the southeast to New York or any other destination, and it never had a need in the past for a volume movement of used automobiles from the southeast. It has required the movement of some cars in volume from New York to Philadelphia. If Alexander did have shipments from the southeast, on a one-car basis to an assembly point, it would prefer that Auto Trip and Triple A provide the service so that it would not have to deal with multiple parties. If Alexander found that rail carriage would take too long to return an automobile from a certain origin, it would request that Triple A be used for the long haul in driveaway service. None of the automobiles have been shipped by Alexander on a government bill of lading.

Alexander has used Triple A to return automobiles by driveaway to New York City, and it describes such service as reliable and very good. On one occasion Triple A returned a car from a point in Louisiana, and the driveaway service to New York City was performed in about 2 days. It, however, had not used truckaway for any return service to New York City. If the freight forwarder application is granted, Alexander will use the service proposed therein, and it would like to continue using Triple A and have it make pickups or deliveries in connection with the freight forwarder service. There is evidence that Alexander's business has been expanding, particularly during the summer season of each year. In the summer of 1969 it had about 500 more cars in its fleet than it did in the summer of 1968. Alexander has not used Motor Convoy, Auto Driveaway or Insured Transporters for any service.

The general manager for Fred Waring's Pennsylvanians, Inc., a musical organization, has used Triple A for a number of years to move certain automobiles which were owned by Fred Waring, who resides in Stroudsburg, Pa. Waring maintains a winter home in Palm Springs, Calif., and his cars have been moved by Triple A between Stroudsburg or New York City, on the one hand, and, on the other, Palm Springs. Waring owns two automobiles. Usually, in the fall, he ships one automobile, with personal property therein, to California, and this is returned to Stroudsburg or New York City in the spring. On some occasions both cars have been shipped. Waring prefers that his cars not be driven by persons outside his family, and his general manager has consulted Triple A several times in the past with respect to obtaining transportation of the automobiles involved by some means that would eliminate the long-haul driving between California and the east coast.

Triple A has transported Waring's automobiles from California to New York City in about 10 days, and on at least one occasion the transportation was performed in about 12 days. Triple A's service has been satisfactory on those occasions when driveaway service was requested. If Auto Trip obtains the freight forwarder authority sought herein, Waring's general manager would use such service. He expects that use of such service would involve line haul rail movements between

New York City and Los Angeles, and he would like to have Triple A perform any pickup and delivery in connection therewith. Use of the freight forwarder service involving rail transportation between the east coast and California would depend somewhat on transit time. Waring would not want to wait 6 weeks, for example, if the freight forwarder service, in conjunction with rail, required that much time to move a car from California to New York City. On service from California to the east coast, Waring's general manager usually has allowed 2 weeks for the driveaway service. Before using freight forwarder service involving rail transportation, Waring would be informed that shipping in this manner would require that his car be consolidated with other automobiles.

Waring's general manager indicates that two automobiles are used by employees for business trips in connection with concerts given at various points in the United States. Among other points, these business automobiles have been transported in driveaway service from San Francisco to Salt Lake City, Utah; Dallas, Tex., to New York City, and from Minneapolis, Minn., to New York City. On transportation involving the business cars time is an important element and for this reason fast service is required.

Waring's general manager has never sought freight forwarder service in connection with transportation of the above described automobiles. Also, he has not made any inquiries of any railroads regarding such transportation, and he was not aware that certain motor common carriers provide truckaway service. He never has used any driveaway service from or to points in the southeast, and is principally interested in having Auto Trip's freight forwarder service available between New York City and points west of the Mississippi River. Waring's general manager has never used Auto Driveaway's service and has not used Insured Transporters in recent years.

Olin of N. Y., Inc., herein called Olin, rents automobiles. Its principal office is located in New York City, and it operates a branch in or near Carl Place, Nassau County, N. Y. There are about 2,000 automobiles in its daily rental fleet and about 1,000 that are leased on a long-term basis. Some of the rented and leased automobiles are driven by Olin's customers to various points in the United States. Occasionally, the rented and leased automobiles fail to function properly, are abandoned, or are stolen, and Olin then arranges to have these cars returned to New York City. Triple A has been used by Olin to return cars from various points in the United States to New York City, and such service has been satisfactory. Recent return service by Triple A has included driveaway transportation from Raleigh, N. C., of a car that had been stolen in South Carolina from one of Olin's customers; from Florida, involving a car that brokedown and was repaired locally in Florida; and one from Nevada. In the situations when Olin's leased or rented automobiles broke down, the customers in some instances will not wait until the repairs are made, and it is then Olin's responsibility to have the automobiles returned. It is possible that a breakdown might occur while one of Olin's cars is being used in California, and the customer would leave the car in that State and proceed to Chicago, for example. In this situation, after repairs are made, Olin might then have the car moved from California to Chicago for further use by its customer.

The rate of returns averages presently from two to five automobiles per month. Olin's total fleet has been increasing by about 450 cars a year. Some of the automobiles, as indicated, have to be returned very long distances, up to or over 2,000 miles. Olin is interested in the proposed freight forwarder application because such service would offer a method of transporting automobiles without the usual wear and tear on the vehicles involved in long driveaway operations. It is aware that the freight forwarder service with the rail haul will cost more, and such increase would not hinder Olin from using it. If, however, the freight forwarder service required excessive time in transit, Olin might not use it. On a recent return of a car from Florida, the evidence indicates that Triple A, after it was requested to perform service, moved the automobile to New York City in less than a week. Apparently Olin does not expect to obtain such prompt transit time by using the proposed freight forwarder service in conjunction with rail transportation. If the freight forwarder service involved required in excess of 3 weeks to perform the necessary transportation, Olin might not use it. None of the returned cars are moved to automobile dealers. Olin has never sought to obtain transportation of its automobiles by a freight forwarder and has not endeavored to obtain truckaway or rail service to move its automobiles. It has never requested Auto Driveaway or Insured Transporters to perform any service.

E. R. Squibb & Sons, Inc., herein called Squibb, manufactures pharmaceuticals at certain points in New Jersey and has established regional sales offices or distribution centers at various points, including Boston, Mass., Atlanta, Ga., Houston, Tex., Kansas City, Mo., Chicago, Ill., Seattle, Wash., Los Angeles, Calif., Cincinnati, Ohio, Omaha, Nebr., and New York City. Squibb employs about 1,000 persons in its sales force. From time to time persons in the sales force are relocated or reassigned, and Squibb arranges for moving the household goods and personal property of the employees involved, including their automobiles. Some employees have second cars in their families. In some instances, when an employee of Squibb has been moved a considerable distance, he does not want to return to the location of his former employment to drive his car to the new residence. Squibb pays the expenses involved, and arranges to move about 100 employees annually. It arranges to have about 25 cars moved each year.

Squibb has used the household goods carriers in the past to move the used automobiles involved, and in July, 1969, it began using Triple A to some extent. It is not entirely satisfied with the service performed by the household goods carriers with respect to used automobiles. On some occasions the household goods carrier selected for service would not

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move the automobile involved. On other occasions, the household goods carrier used by Squibb would move the automobile involved to a railhead, and shipper would then have to make further arrangements from that point. On one occasion Squibb engaged a household goods carrier to move an employee's car from Miami, Fla., to Minneapolis, Minn., and from Minneapolis to Cincinnati, Ohio. On some occasions when Squibb employees' cars have been placed in moving vans, damage has occurred to certain automobiles. There is some evidence that it would cost Squibb about $600 to transport a car from California to New York City in a household goods moving van. The freight forwarder service proposed by Auto Trip appeals to Squibb because shipper would, in effect, deal only with one organization in regarding transportation of employees' automobiles. The evidence indicates no carrier or forwarder has offered Squibb the type of service proposed herein. It will use the proposed freight forwarder service if authority therefor is granted, and the evidence indicates that Squibb would use such freight forwarder service in conjunction with truckaway service as well as in combination with rail.

Squibb desires to continue to have Triple A service available, and professes a need for the freight forwarder service so that the employees involved in the above described relocation and reassignments can either have their cars driven to the new locations, if they so request, or have the use of rail or truckaway service when they prefer such transportation to avoid the wear and tear involved in driving their cars on the long hauls. Some employees simply do not want anyone to drive their cars long distances. Squibb is aware that use of the described freight forwarder service in conjunction with rail or truckaway will cost more. It cannot anticipate in advance what points in the United States might be involved in a personnel shift. For example, the Seattle distribution center has about 60 salesmen that travel from that point eastward into various parts of the northwest and southward into Oregon, and these salesmen live at certain points throughout the territory in which they travel.

Normally, when a shift is made, and Squibb arranges for transportation of used automobiles, the employees involved want their cars at the new location as soon as possible. However, as indicated, some have second cars. Additionally, Squibb has a liberal policy with respect to the shifted employees renting automobiles at the new location until their own cars arrive. On some occasions short distances are involved, when Squibb moves salesmen from Florida to Atlanta, and the cars are driven by the employees.

Squibb's representative had not personally determined what service is available currently from the railroads, existing freight forwarders, or from the motor common truckaway carriers, with respect to transportation of used automobiles. It had not checked beyond Triple A to find out what authorized driveaway service is available. Squibb's representative was not aware of Motor Convoy's service, and apparently he would not hesitate to use such transportation in the event Squibb had need for that protestant's service within the scope of its authority. He was not aware that driveaway service, under the proposed freight forwarder operation, might involve movement of an automobile over the road several hundred miles. He has never used Auto Driveaway or Insured Transporters, and was not aware that Insured Transporters can provide both driveaway and truckaway service in certain territory.

A Brooklyn, N. Y., resident employed as a sales manager, travels by airplane to Florida occasionally on vacation, and is considering visiting Miami or Miami Beach in the latter part of November or early December 1969. He expects to stay in Florida about 3 weeks. Before going to Florida he plans to trade in his present automobile for a new one, and he would like to have the newly acquired automobile available for use in Florida about a week after he has arrived there. He does not like to have persons outside his family drive his car long distances, and is interested in proposed freight forwarding service whereby Triple A would pick up his car and drive it to a railhead near New York City, from which point rail service would be used to a location near Miami. He has no objection to having his car driven short distances in pick up and delivery service in conjunction with the long-haul rail transportation. He does want his car transported in a moving van.

This witness was on vacation in Florida about 5 years ago, but did not have his car moved to Florida because he did not want it driven over the road such a long distance. In July 1969, he inquired of Triple A whether there was some transportation service available other than driveaway for moving his car to Florida. On the visit about 5 years ago he rented a car in Florida for about 10 days. He prefers, however, to have his own automobile available, if possible. He believes he can afford to use Auto Trip's proposed freight forwarder service in conjunction with long-haul rail transportation and would like to have the option of using it. He is not aware of any carrier or freight forwarder which would provide service similar to that which Auto Trip and Triple A propose herein. Witness would like to use his car in New York City as long as possible prior to his departure for Florida and have it available in Florida as long as he can before it is shipped back to New York City; and, of course, prefers to have it move on the return trip expeditiously so that he will have the car to use in his occupation.

Although he has not inquired what the proposed freight forwarder service, in conjunction with rail transportation, will cost, this is a matter he will consider before using such service. He is aware that Triple A charges about $99 to move a car from New York City to Florida in driveaway service, and expects the service involving use of rail transportation will be higher. If the cost one way, to or from Florida, is $100 more than the all-driveaway charge, witness would possibly consider leasing a car in Florida. In using Auto Trip's proposed freight forwarder service, witness indicates a willingness under normal conditions to pick up his car at the railhead in or near Miami if the distribution point is close to where he is staying and can be reached conveniently. On the other hand, he might prefer to avoid performing such pick-up service. He indicated that he might travel to California in the future for a 3-week visit, and that he would consider using the proposed freight forwarder service in conjunction with rail transportation. At the hearing, however, he was not aware that such service would involve consolidating his car with a number of other automobiles for shipment by rail. In using the above described service, witness would expect to load in his car certain personal effects, including used sporting equipment.

The president of a corporation in Wayne, N. J., Passaic County, testified in support of the application. His wife travels by airplane to Miami Beach, Fla., each winter to visit her grandmother for extended periods of time. Witness owns two cars, and he supports the service proposed herein by Auto Trip and Triple A because it would be convenient in the future to ship one of the automobiles to Florida in the winter by use of the freight forwarder service in conjunction with the described rail transportation. He has made inquiries in recent years of Triple A regarding the availability of a service that would eliminate the driveaway service over long distances. He does not object, however, to short-haul driveaway of the type involved in local transportation to or from railheads.

On one occasion this witness traveled to California for a long stay during his employment in that State. Prior to leaving on that trip he was unsuccessful in an attempt to obtain any used automobile transportation other than driveaway service. He would not drive one of his own cars to California, and eventually rented a car for a period of 4 months. His wife plans to visit Florida again this winter and he would like to be able to arrange for service of the type proposed herein, including transportation of any baggage and personal belongings that would be shipped in the car. He is aware that service in conjunction with rail transportation will be more expensive than driveaway transportation. He prefers, however, to use the proposed service. This preference is based somewhat on the fact that his wife suffered a knee injury which has resulted in some physical impairment, and she prefers to confine her driving to automobiles which she has become used to operating. As to time in transit, witness expects that the car that would be involved could be moved by Auto Trip and Triple A from Wayne to Miami in about 10 days, and that the return transportation would be performed in about the same length of time. He has no objection to Auto Trip selecting an authorized truckaway carrier to provide the long-haul service. The witness, prior to the hearing, was not aware of Auto Driveaway's service, and he did not know to what extent that carrier and Insured Transporters can provide transportation of used automobiles. Apparently he had not made any inquiries of any authorized truckaway carriers.

A sales manager in New York City engaged in selling women's coats and suits occasionally attends business shows at certain points in the United States, principally those held in Detroit, Mich., Akron, Cleveland, Cincinnati, Dayton and Toledo, Ohio, Chicago, and Miami or Miami Beach. On these trips he usually travels by air and it is essential that he take along certain samples and business records. In some instances, at Chicago, Cleveland and Detroit, he has rented automobiles for local travel in and near these cities to visit customers. He prefers, however, on some of these trips to have his own automobile available. On at least one occasion in the past he consulted Triple A with respect to transporting his automobile, but lost interest when informed that his car would be driven over the road. He is interested in the freight forwarder service proposed, with the long hauls being performed by rail or truckaway, and in the Triple A service that would be provided locally to and from the assembly or distribution points. Of particular interest, in conjuntion with such proposed service, is the convenience of having his own automobile and at the same time of being able to store his business records and samples in the car. Of course, there is the wear and tear avoidance factor that has been mentioned herein previously, and witness is insistent that his car not be driven over long distances.

Witness indicates that he would use the proposed service about twice a year, and that he is willing to pay the higher cost of such service. Each of the business or market shows involved normally last from 10 days to 2 weeks, and, occasionally a show might extend to 3 weeks. From New York City to Miami and the other points named above, witness expects that the time in transit on his car would be 6 to 8 days. If the service required transit time of 10 days to 2 weeks, his use of it would be more limited. As indicated, he has rented cars at certain points, but this is not entirely convenient because it is necessary for him to arrange for the transportation of his baggage and samples by air for the long hauls, and at origin and destination there is certain extra handling of the baggage and samples that witness can avoid if his own car is available.

A resident of Flushing, N. Y., rents an apartment in Miami Beach. He and his wife live in Miami Beach about 5 or 6 months, and return to Flushing in May of each year. Witness owns an expensive automobile, and he has used Triple A for about 5 years to move his car between Flushing and Miami Beach. In the past Triple A has picked up the car about 3 or 4 days before witness and his wife departed for Florida, and delivery of the car usually has been made about 2 days after they arrived in Miami Beach. When the car was returned to New York City in the spring of 1969, the driver used by Triple A had an accident involving about $1500 in damage to the car. Although the witness was compensated for this damage and will still continue to use Triple A service, he supports the freight forwarder application because by use of such service he expects that his car would not be driven long distances over the road. He does not care whether the long-haul service is performed by rail or by truckaway. He believes, by use of such service, there would be less risk of damage to his car, and he is willing to pay the higher cost for such service. He has no objections to using such service if it requires from 8 to 10 days to move his car from Flushing to Miami Beach. He indicated he would not use such service if it required from 3 to 6 weeks to move his car from Flushing to Miami Beach. In the local pickup and delivery service involved, witness prefers that so-called professional drivers be used. Witness would pack some items of personal property in the trunk of his car, but no clothing.

A resident of Hartsdale, N. Y., in Westchester County, travels to Florida each winter. The duration of each visit to Florida in the past was about 2 months. In the future his annual winter visits to that State are expected to be longer, about 5 months. He has two automobiles, and would like to have them available for use during the time he and his family are in Florida. On one visit to Florida, about 3 years ago, witness drove his car to Florida, and used Triple A driveaway service for return of the automobile to New York City. He also used Triple A once in 1968 to transport a car from New York City to Detroit. On some occasions he has rented automobiles while in Florida.

This witness supports Auto Trip's application and emphasizes a preference that any automobiles shipped by him be transported to Florida and return with as little driving as possible. He is aware that use of the freight forwarding service in conjunction with rail or truckaway transportation will cost more, and is willing to pay the extra charge involved. He is aware also that the use of rail service by Auto Trip might result in transit time exceeding 6 to 8 days in moving an automobile from New York City to Miami, and that Auto Trip would accumulate and consolidate shipments of other cars with his in performing freight forwarding service. When he used Triple A in the past to move his car from Florida to New York City, there is evidence this required 10 days. If the freight forwarder service, in conjunction with rail, requires from 3 to 6 weeks to move his car from New York City to Florida, his interest in this method of transportation would diminish considerably.

When witness ships his automobile, he prefers to deal with one organization, which would provide the necessary pickup and delivery service as well as the line-haul transportation, Although, his travel between New York City and Detroit is quite limited, he would like to have Auto Trip and Triple A available for service on such occasions; also he desires such service available for infrequent trips between Florida and Detroit where some members of his family reside.

Witness will use the freight forwarding service proposed and the related service of Triple A, if the applications are granted. He is willing to use any motor common carrier or freight forwarder that can transport or arrange for the transportation of used automobiles within the territory in which he might need the type of service he requires. When witness had a car moved from Florida to New York City and from New York City to Detroit, the automobile involved had no baggage or personal effects therein. He believes, however, that the availability of service for moving baggage and personal effects along with the automobiles is beneficial.

A resident of Brooklyn, N. Y., travels to Florida twice each year, usually in December and March. The duration of each visit to Florida approximates 2 weeks. In the past he has used Triple A on a number of occasions to transport his automobile or one that he has rented, between New York City and certain points in Florida in or near Miami, and such service was satisfactory. He also has used certain other motor carriers that provide driveaway service on automobiles between New York City and Florida. He has not used Auto Driveaway or Insured Transporters, and has never consulted any railroad or truckaway motor common carrier for service.

This witness is interested in using the freight forwarder service proposed by Auto Trip, and have the car he uses moved by rail or truckaway. He would use this type of service even though the cost would be more than the usual driveaway charge for line-haul transportation between New York City and points in and near Miami. In using such proposed service, witness would prefer that Triple A provide the pickup and delivery service involved because that carrier has performed satisfactory service in the past. If, for some reason, Triple A was not available to perform the necessary pickup and delivery service at the time his car originated at New York City or delivered in the Miami area, he has no objection to such local transportation being performed by some other motor carrier which is authorized to provide such service. If the line haul by rail required 2 or 3 weeks, witness would request Triple A to provide the necessary transportation by long-haul driveaway. If Auto Trip does not obtain the freight forwarder permit sought, witness would continue to use Triple A to move his car between New York and the described Florida area.

PROTESTANTS' EVIDENCE

Evidence in opposition was offered by Auto Driveaway, Automobile Transport, Boutell, Dealers Transit, Dependable, Insured Transporters, Motor Convey, National Trucking, Nu-Car Carriers and Sober.

Protestants, collectively, maintain offices at numerous cities in the United States, including Chicago, Los Angeles, Miami, San Francisco, and New York City, and they establish new office locations from time to time. Some of the offices are operated by agents under agency agreements. Protestants advertise their services in newspapers and telephone directories, and, additionally, some seek traffic by using direct mailing lists. Their pertinent authorities are described in the Appendix herein, and they hold out and perform service under such operating rights.

Auto Driveaway, in addition to the pertinent authority described in the Appendix, has received a favorable decision in its pending application No. MC-125985 (Sub-No. 4). If that recent decision of July 9, 1969 becomes final, Auto Driveaway would obtain a certificate authorizing, as here pertinent, irregular-route transportation of used passenger automobiles, in single driveaway, in secondary movements, between points in the United States (except Hawaii and the 16 States named in its certificate in No. MC-125985). Consequently, under the combined authority of its certificate No. MC-125985 and the authority set forth in the findings of the July 9th report in No. MC-125985 (Sub-No. 4), if certificated, Auto Driveaway could transport used automobiles between all points in the United States, except Hawaii, subject to the government bill of lading and prior or subsequent rail restrictions specified in the Appendix with respect to certificate No. MC-125985.

To show possible diversion of traffic, if the authority sought herein is granted, Auto Driveaway offered a list of about 1,150 shipments of cars it transported in driveaway in January and April 1969. The cars were originated at points in about 34 States and were destined to points in about 30 States and the District of Columbia; and, some were destined to a few points in Canada. A good share of Auto Driveaway's business involves transportation of cars consigned to automobile dealers, and this is the principal basis for this protestant's opposition to the [illegible] motor carrier application. It, of course, holds no authority as a freight forwarder. It is concerned, however, that a grant of the freight forwarder application might result in some diversion of traffic from Auto Driveaway. A grant of freight forwarder authority would enable Auto Trip to offer the public an alternate type of service, and Auto Driveaway believes it would lose traffic by diversion because its service is more or less limited to one type of service. It believes any diversion would be greater in the big cities, such as Chicago, Detroit, Miami and Los Angeles. In one instance, in November or December 1968, Auto Driveaway moved 24 automobiles from Chicago to Redding, Calif., by long-haul driveaway when a delay was encountered in obtaining tri-level rail cars for these vehicles.

Boutell maintains terminals at various points. The list includes Detroit and Flint, Mich., Port Elizabeth and Ridgefield, N. J., Baltimore and Jessup, Md., and Framingham, Mass., where it conducts operations from or to railheads. It employs a large number of drivers, and operates a large fleet of truck-tractors and trailers. Its investment in truck-tractors and trailers approximates 7-½ million dollars, and in buildings, land and furniture its investment is slightly in excess of 2-¼ million dollars.

In 1968 Boutell transported about ½ million automobiles. The majority of this traffic was received from General Motors, an automobile manufacturer. Boutell is experienced in performing truckaway service in secondary movements from railheads, and also has performed driveaway service in secondary movements therefrom with respect to new automobiles. Up to the time of hearing it had not transported any used automobiles in driveaway, in secondary service, from any railheads, but is willing to provide such service. Also, it had not transported any used automobiles in driveaway, in secondary movements, from or to any points on behalf of a freight forwarder. If Auto Trip obtains the authority sought, Boutell is willing to perform service for this applicant, providing the rates are satisfactory. Boutell occasionally receives requests from individual car owners in Michigan to move used automobiles from that State to certain points that protestant can serve. It usually can provide such service in truckaway by mixing such shipments with its outbound new-car traffic; and, can perform return service to Michigan in truckaway, in secondary movements, providing it has equipment in the area where the used cars are originated. It is a rare occasion when Boutell has transported any used automobiles for individuals, in truckaway, in secondary movements. Normally, it has not transported used cars for individuals in driveaway, in secondary movements, and it has no specific authority to transport baggage or personal effects which might be shipped with used automobiles.

Although Boutell indicates it can accumulate used automobiles and hold them at its terminals in order to make up truckloads, protestant has not, in the past, performed such service for individuals. Normally, Boutell operates its tractor-trailer units to destinations within about 450 miles of the Michigan origins it serves. There are occasions, however, when the automobile manufacturers and shippers in Michigan cannot obtain rail cars promptly, and Boutell is requested to transport automobiles to more remote destinations.

Boutell points to the fact that it withdrew its opposition to Triple A's Sub 1 application when the restrictions previously described herein were accepted. Boutell transports automobiles on government bills of lading, moves cars to dealers, and transports ex-rail traffic. It, however, up to the time of hearing, and had not transported any used cars with respect to ex-rail traffic. It is willing to provide such service within the scope of its operating rights. It can transport additional traffic.

Dependable's evidence, in addition to its present authority described in the Appendix, consists of descriptions of certain operating rights applied for by this protestant in No. MC-125978 (Sub-No. 8) and FF-349. No. MC-125978 (Sub-No. 8) relates to proposed transportation, as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, with or without baggage and personal effects, in driveaway service, (1) between points in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania and Rhode Island, and (2) between points in Florida, (a) restricted to traffic having an immediately prior or subsequent movement in freight forwarder service, and (b) restricted against transportation of vehicles moving on government bills of lading, and moving for, from, or on behalf of manufacturers of new automobiles except licensed vehicles transported for use of personnel of manufacturers.

No. FF-359

No. FF-349, filed by Dependable Auto Shippers, Inc., a wholly owned subsidiary of Dependable, relates to proposed freight forwarder operations, by use of common carrier facilities of railroad, water and motor vehicles, in the transportation of used passenger vehicles, with or without baggage and personal effects between Connecticut, Massachusetts, New Jersey, New York, Pennsylvania and Rhode Island, on the one hand, and, on the other, Florida, restricted against traffic moving on government bills of lading and moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers. Both of the applications were heard on a consolidated record. Reference to the Commission's files show that these applications were the subject of an examiner's report and recommended order (served September 5, 1969). The report of the examiner delineates findings which recommends grants of authority in each application substantially as sought.

Insured Transporters, in addition to office representation at about 60 points, maintains terminals at a number of locations, including Jacksonville, Fla., Portland, Oreg., Seattle, Wash., and San Leandro, Calif. This intervener offered an exhibit listing about 433 shipments of "motor vehicles" it transported in May, June and July 1969, in driveaway, in secondary service. These shipments were originated at various points in about 38 States and were transported in single-line service to numerous points in the United States within the territory Insured Transporters is authorized to serve. Although intervener transports some shipments moving on government bills of lading and those which have prior rail or water transportation, none of the shipments on the exhibit were shown to be traffic of that type. A considerable amount of the secondary driveaway shipments listed on the exhibit moved to automobile dealers. Also, intervener transports a considerable amount of shipments, in truckaway service, that have had prior movement by water carrier. It holds out to perform service for freight forwarders and other shippers within the scope of its authority. If Auto Trip obtains the authority it seeks herein, intervener is willing to provide service for applicant, including driveaway, in secondary movements, at either end of the line hauls involved. Insured Transporters believes that a grant of the authority sought by Triple A would result in diversion of a "great deal" of interveners traffic.

Motor Convoy maintains terminals at a number of points in the south and southeast, and operates a large fleet of truck-tractors and trailers. A majority of the trailers are constructed with two decks and each of these can carry 6 or 7 automobiles. It employs about 330 drivers, who are used principally to drive tractor-trailer equipment. Intervener performs service extensively in truckaway and driveaway on ex-rail shipments at railheads in or near Atlanta, Ga., Charlotte and Winston-Salem, N. C., Columbia, S. C., Jacksonville, Miami and Tampa, Fla., Savannah, Ga., Birmingham, Ala., Nashville, Tenn., and Jackson, Miss. Some of the automobiles received by Motor Convoy at these railheads for distribution originate at various points in Michigan, Kenosha, Wis., Lorain, Ohio, Louisville, Ky., Norfolk, Va., St. Louis and

Kansas City, Mo., and Mahwah and Metuchen, N. J. About 80 percent of the motor vehicle traffic transported by intervener is ex-rail.

In the first quarter of 1969 intervener transported 9,789 vehicles from Miami, and practically all of this was ex-rail traffic. In the same period, from Tampa, 900 vehicles were transported, but not all of this traffic was ex-rail; and from Jacksonville, 3,701 were transported, most of which consisted of ex-rail traffic. In the first quarter, within the scope of its operating rights, the overall number of vehicles moved by Motor Convoy totaled 124,894. Intervener points to the fact that, in addition to ex-rail, a "good" portion of its traffic consists of shipments moving on government bills of lading and shipments destined to auto dealers. Consequently, in opposing Triple A's application it would like to have the government bill of lading and dealer restrictions retained in any authority that might be granted. As indicated, it does not oppose the freight forwarder application. If the freight forwarder application is granted, Motor Convoy is ready, willing and able to provide driveaway and truckaway service, within the scope of its authority, on used automobile traffic that Auto Trip would arrange. Intervener is aware that the authority described in the Appendix, in sub-paragraph (a) relating to its certificate MC-3591 (Sub 1), does not specifically authorize the transportation of baggage and personal effects with automobiles, but in sub-paragraph (b), in the Appendix relating to certificate MC-5581 (Sub 1), Motor Convoy has authority to transport "automobiles, automobile show equipment and paraphernalia", among other things.

National Trucking maintains terminals at Hapeville, Ga., and at Jacksonville, Miami and Tampa. The Florida terminals are used in providing transportation of automobiles in truckaway and driveaway, in secondary movements, from railheads at or near the three cities named, and the Hapeville terminal is used in performing ex-rail service from Atlanta. National Trucking also performs some service from Orlando, Fla. It operates a large fleet of truck-tractors and trailers, and employs about 65 drivers. Some of the trailers are capable of transporting seven automobiles. National Trucking transports about 146,000 automobiles annually, and of this amount about 1,000 are used cars. Its tractor-trailer equipment, in distributing the cars, averages about 81 miles on each trip from the railhead to the destination. Some one-way trips, however, range from about 300 to 500 miles from the railhead.

National Trucking is principally interested in retaining the used car traffic it moves from the railheads, and believes some of this traffic might be diverted if Triple A obtains the authority sought. Some of the automobiles National Trucking transports move on government bills of lading. If Auto Trip obtains the freight forwarder authority sought and arranges for transportation of used automobiles by rail to Florida and Georgia, National Trucking is willing to provide driveaway or truckaway service from the distribution points.

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Nu-Car maintains terminals at Edison, Newark and Mahwah, N. J., Boston, Mass., Earnest, Pa., Baltimore and Jessup, Md., and Norfolk, Va., and it operates a large fleet of truck-tractors and trailers for moving automobiles. Its headquarters is located at Bryn Mawr, Pa. It employs a large number of drivers for truckaway and driveaway service. A considerable percentage of Nu-Car's trailers are designed to haul at least 6 automobiles. The terminals at Newark, Earnest and Jessup are used extensively by Nu-Car for participating in ex-rail traffic, and facilities are available at those terminals to consolidate or accumulate shipments of automobiles. It can deliver atuomobiles from these terminals or railheads within the scope of its authority by driveaway or truckaway, and it can pickup shipments and deliver them to these terminals or railheads. It also can provide, and is willing to perform, long-haul driveaway or truckaway service within the scope of its operating rights.

In 1968 Nu-Car transported about 681,433 automobiles. During the first 6 months of 1969, Nu-Car handled 5,643 automobiles through its Boston terminal and about 80 percent of these shipments involved new cars. It also transports used cars, including some traffic for a leasing company which it considers desirable because this has enabled protestant to use its equipment and driveaway personnel more efficiently.

As indicated in the Appendix, Nu-Car does not have specific authority to transport any baggage or personal effects along with automobiles. It informs any prospective shippers of this, and in transporting used automobiles Nu-Car does not issue any bills of lading for any baggage or personal effects.

Nu-Car, performing driveaway service, has never used substituted rail transportation for any portion of a trip. It has, in some instances, for its own convenience, substituted truckaway for driveaway service. Nu-Car can combine a number of used automobiles for transportation by truckaway. In some instances, however, when a single used car is tendered, driveaway service is performed when there are no other cars to mix with it to make up a practical truckaway load.

Nu-Car protested Triple A's prior application in No. MC-125808 (Sub 1) and withdrew its oppostion at the hearing in that proceeding when certain amendments were made to include the restrictions that are now contained in the Sub 1 certificate.

Sober maintains terminals at numerous points including Buffalo, N. Y., Linden, N. J., Bridgeport, Conn., Baltimore, Md., Cleveland, Ohio, Lansing, Mich., Chicago, Ill., Detroit, Mich., Kansas City, Kans., East St. Louis, Ill., and Los Angeles, Calif. It operates a large fleet of truck-tractors and trailers suitable for conducting automobile truckaway service. Its investment in truckaway equipment is slightly under 4 3/4 million dollars, and it is an approved and qualified carrier for handling shipments in bond through customs. It employs about 300 drivers for driveaway service, and approximately 240 to perform truck-

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away service. Sober uses only regular employees as drivers, and it pays wages and benefits established by industry collective bargaining.

Sober transports automobiles in secondary movements for many different types of shippers, including automobile manufacturers and dealers, Federal agencies, moving and storage companies, banks, finance and insurance companies, auto rental companies, business concerns that operate fleets of automobiles, private individuals, ocean forwarding companies, foreign auto distributors, and certain companies that specialize in auto body work. Since automobile manufacturers now use multi-level rail car service, Sober depends to a considerable extent on secondary movements in driveaway and truckaway, and it requires a certain volume of business to operate profitably and maintain its facilities. At time of hearing it was not operating to full capacity and is willing and able to transport additional shipments of automobiles in driveaway or truckaway in secondary movements.

Sober is not so much concerned with Triple A's application, if the authority sought is confined to the handling of automobiles in single driveaway service by casual drivers for casual shippers. It believes, however, that removal of the restriction against handling shipments having an immediately prior movement by rail would permit Triple A to offer its services to commercial shippers and provide added competition in view of the present and potential use of rail multi-level cars for transporting automobiles. It regards competition of casual driveaway companies as unfair and destructive as respects commercial shippers in the regular or recurring business of shipping automobiles, indicating that the casual driveaway companies are able to offer their service at cheaper rates. Because of the cheaper rates it believes that one group of commercial shippers would enjoy cheaper transportation charges than are required to be paid by others, if the casual driveaway companies are not limited to the individual casual shippers.

Sober opposes the freight forwarder application because a grant of such authority to Auto Trip, would place Triple A in the position of offering competing types and kinds of services in respect of the transportation of the same commodity in the same territory. It is apprehensive that a grant of such authority will permit Auto Trip and Triple A to divert some of the used automobile traffic protestant now enjoys in truckaway and driveaway, and that Sober will be handicapped in making consolidations of small shipments. Sober believes that it can assemble and consolidate such shipments better and more efficiently without the intervention of a freight forwarder, and that a grant of the freight forwarder application would not be consistent with the public interest and the National Transportation Policy. It has conducted profitable operations so far in 1969 and in 1968. Its operations in 1967 and 1966 were not profitable. Sober's certificates, pertinent herein, do not specifically authorize transportation of baggage and personal effects.

Automobile Transport maintains terminal facilities at a number of points, including Wayne, Mich., Baltimore, Buffalo and Boston. It operates a large fleet of truck-tractors and trailers suitable for transporting automobiles in truckaway service. It also provides driveaway service as indicated in the Appendix. It employs a large number of drivers on a regular basis and a considerable number on a part-time basis. Dealers Transit performs driveaway service within the scope of its operating rights, but does not use casual drivers. Further testimony relating to Dealers and Automobile Transport was stipulated to the effect that if their witnesses, who were present at the hearing, were called to testify, such testimony would be similar to that offered by Boutell and Nu-Car.

CONCLUSIONS

As indicated herein, Triple A has published a tariff, and holds out single-line service to the public, which includes a provision for motor carrier transportation under its present certificate using substituted rail service for the long hauls. Since Triple A's certificate No. MC-125808 (Sub-No. 1) contains, among other things, a restriction against the transportation of any traffic having a prior movement by rail or water, certain questions are raised whether the use of multi-level rail cars or TOFC service by Triple A in substituted service would consititute a prior movement by rail. If it does, then Triple A could not hold out to the public that it has authority to drive the used automobiles from the distribution points, at the end of the rail haul, to the destinations. There is no question that Triple A has authority to pick up used automobiles at points or origin and drive the cars to railheads or points of assembly near railheads before they are loaded on rail equipment. The difficulty on interpretation arises with respect to the service it can perform after the substituted rail transportation part of the operation is completed.

Applicant is concerned also whether its Sub 1 certificate would be interpreted not to include driveaway service at the distribution end or points if such service was performed for a freight forwarder which uses rail transportation for the long haul of used automobiles, even though such certificate contains no restriction against transporting shipments of a freight forwarder. If the freight forwarder uses rail for the long haul, it can be argued that a prior movement by rail is involved, and that Triple A could not perform driveaway from the break-bulk points to destinations. Conversely, it can be argued that the secondary driveaway service from the break-bulk points is being performed for a freight forwarder and not for a rail carrier, and that such driveaway service is not prohibited in applicant's Sub 1 certificate.

With respect to the contention by Triple A that it presently can provide single-line driveaway service, in secondary movements, by using substituted rail transportation, some doubt was cast upon this viewpoint by an order of Division 2, on

August 1, 1967, in No. 35147. In that proceeding Triple A has issued Freight Tariff, MF-I.C.C. No. 5, in which certain provisions were published covering substituted service (rail for motor) and Division 2 concluded Triple A was offering a service that exceeded the scope of its operating authority. Triple A filed a petition for reconsideration and stay of the August 1 order. By order of September 16, 1969, (served September 22) Division 2 reopened that proceeding for the purpose of considering such petition and extended the compliance date involved therein until further order of the Commission. Subsequently, by order dated October 23, 1969 (served October 30) the Commission (by Commissioner Walrath) permitted Automobile Transport, Auto Driveaway, Baker, Dealers Transit, Gate Transport, Kenosha Transport, M & G, Square Deal, Sober and Transporters Association to intervene in that proceeding. Also, their replies to the petition for reconsideration and other relief were accepted for filing by that order and they were authorized to participate in any subsequent stages of thatproceeding.

Under the rules established in Substituted Service-Piggyback, 332 I.C.C. 301, 413, herein called the Piggyback case, motor common carriers and freight forwarders may use TOFC service in the performance of all or any portion of their authorized service through the use of open-tariff TOFC rates published by rail carrier. In that proceeding the Commission concluded, at page 349:

> "when a motor common carrier participates in Plan I TOFC operations, paying the railroad compensation other than that set forth in the railroad's regularly published tariff, the motor carrier's status is that os a connecting carrier in joint service provided voluntarily by the participating rail and motor common carriers; and that Plan I TOFC operations thus constitutes a valid through-route and joint-rate arrangement within the contemplation of section 216(c) of the act."

In making the above conclusions, the Commission recognized in the Piggyback case that its expressions therein are at variance with some of the reasoning in the NATA case, and it was stated, at page 350, "the TOFC practices of motor carriers of automobiles - whose operating authorities are limited specially to initial or secondary movements - have been separated from the other issues here present because of the unique problems involved and have been set for further proceedings."

In the NATA case, page 412, the Commission concluded that the transportation of new automobiles in an initial movement from a manufacturing point to a rail point for the further movement by rail TOFC or multi-level rail car service, under the circumstances described therein, does not destroy the initial nature of the movement; and, at page 413, it was stated that motor contract carriers as well as motor common carriers could participate in substituted service under TOFC plan 1, and the Commission made the further conclusion that ~~the use by motor car-~~

riers of substituted rail service is a true substitution and that such movement, for all legal purposes, remains the operation of the motor carrier. The Commission stated that contract carriers are not prohibited from using substituted service merely because they cannot participate in joint-line service with motor or rail common carriers; and concluded that the entire operation, at least in the present state of law and under Commission regulations remains that of a motor carrier.

In the *NATA* case, a quote from the Tentative report, reproduced *therein*, page 432, is worthwhile here, in reference to Administrative Ruling 75:

> "A secondary movement is, essentially, any movement other than one originating at a place of assembly or manufacture. An initial movement ends when the initial carrier delivers a new vehicle to a consignee or a connecting carrier, relinquishing at that point, for all intents and purposes, its responsibility for the vehicle. Under TOFC plan I service, whereby a motor common carrier utilizes substituted rail-for-motor service, no delivery or interchange with a rail carrier is envisaged; rather, what is contemplated is the substitution of rail service for a portion of the service that the motor carrier can already perform through an all-motor service under its existing authority. Unlike a TOFC plan V movement where there is a joint rate and the rail carrier's service may extend beyond the authorized service area of the motor carrier, TOFC plan I is a true substituted rail-for-motor service, and in our opinion the initial character of the movement continues."

Although irregular-route operations were involved in the *NATA* case, Division 1 pointed out that the rail portion of the haul was performed over a route the motor carrier can serve and the sum of the combined rail and motor movement was within the scope of the motor common carrier's authority to serve the origin and destination. In the *NATA* case the initial carrier on its irregular route operations between A and D, could go through B and C even though it could not originate or deliver traffic at those intermediate points. Apparently it was recognized in the *NATA* case that it would be absurd to hold that a carrier, for example, which was authorized to transport automobiles, in initial movements, from an origin in Indiana all the way to Florida, over irregular routes, traversing if it desired, Cincinnati, Ohio and Atlanta, on the way, could not use substituted rail-for-motor service from Cincinnati to Atlanta.

The examiner concludes that there is nothing in the *NATA* case or the *Piggyback* case which would bar a motor carrier authorized to transport used automobiles in driveaway service, in secondary movements, in interstate commerce, from using substituted rail-for-motor service for a portion of the movement in performing transportation from and to points it is authorized to serve under its certificate or certificates. With respect to Triple A, it is authorized territorially to perform irregular-route driveaway, in secondary movements, on a non-radial basis, between points in the United States, excluding Hawaii, and there are no non-service intermediate points in such authority within the Nation's contiguous States.

Having concluded that Triple A can substitute rail-for-motor transportation in performing its service, what about the driveaway from the distribution or break bulk point? In the *NATA* case the Commission recognized a changing situation in which the automobile manufacturers were switching to the use of multi-level rail cars for long hauls and that the motor carriers of new automobiles were affected adversely from an economic standpoint. In the examiner's opinion, the decision in the *NATA* case is sound, and Triple A is justified in contending, on the basis of that decision, that it can substitute rail-for-motor under Plan I TOFC and that the prior-movement-by-rail restriction in its Sub 1 certificate does not preclude it from driving the automobiles from the distribution or break-bulk points to the destinations. Nevertheless, it must be recognized here that the transportation of automobiles, in initial and secondary movements, involve some unique problems, that the conclusions in the *Piggyback* case are at variance with some of the reasoning in the *NATA* case, and that as long as the Sub 1 certificate of Triple A contains the prior-movement-by-rail restriction it will be vulnerable to the contention that motor carrier service by Triple A beyond the break-bulk railhead or rail distribution points is excluded when Triple A substitutes rail for motor transportation on the long hauls.

An analysis of the evidence herein establishes clearly that there are shippers of used automobiles, large and small, who prefer that their cars not be driven long distances; that they prefer truckaway or multi-level rail cars be used for the long hauls; and that they are willing to pay for the extra charges involved. In the examiner's opinion, these changing conditions in which the public demands an alternative service must be recognized. And it is only reasonable to expect that Triple A would take the action it has to insure meeting the needs of its shippers on a complete basis, including the holding out to provide the deliveries required by driveaway from the distribution or break-bulk points. The evidence indicates that certain shippers desire to deal with one organization in making arrangements for movement of their used automobiles, that they have used Triple A in the past, and desire to continue using its service. To hold, in view of the evidence here, that Triple A should not be permitted to provide the delivery service on used automobiles by driveaway at the break-bulk or distribution end when rail-for-motor is substituted on the long hauls, would be unduly harsh, and place it in a static position which might well have an adverse affect economically on Triple A. It is fairly well known that a large volume of new automobiles presently are transported in rail-motor-service and that in some cases [4] where the authority sought includes new automobiles as well as used cars, the Commission has applied a restriction against traffic having a prior or subsequent movement by rail where it deemed it advisable, apparently to protect the interests of existing carriers that are authorized to serve new car manufacturers. The present authority of Triple A, however, is limited commodity-wise to used passenger automobiles, in driveaway service, in secondary movements, with or without baggage, personal effects and sporting equipment. In the Sub 1 proceeding, AAACON Drivers Exchange, Common Carrier Application 102 M.C.C. 393, 394 Triple A, as here pertinent, sought authority to transport passenger automobiles, in secondary movements, in driveaway service, and amended the application at the hearing in that proceeding to restrict the operations proposed therein against transportation for or on behalf of manufacturers of automobiles or to dealers, against the handling of "such traffic having a prior movement by rail or water, and against the handling of such traffic on government bills of lading", and on the basis of such amendment a number of carriers withdrew their opposition. Division 1, in granting authority in the Sub 1 proceeding, cut the commodity description "passenger automobiles" down to "used automobiles" and explained that in view of such more limited commodity description and the secondary movement limitation it was not desirable to further burden the authority granted with the proposed restriction against the transportation of vehicles for or on behalf of manufacturers. It was not explained why it was necessary to retain the prior movement by rail or water restriction as to used automobiles. While it can be argued that Triple A offered no evidence in the Sub 1 application to show any need of service to or from rail facilities or by rail transportation substituted for motor carriage, analysis of the shipper evidence offered in the Sub 2 case considered herein dispels any such argument with respect to present needs.

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[4] See *Auto Driveaway Co. Common Carrier Application*, 100 M.C.C. 724, 727 and 728, as modified by Division 1 (Acting as An Appellate Division) by its Order of July 18, 1966 in the same proceeding.

Although certain protestants argue on brief that the existing service is adequate, the evidence indicates that the service proposed by Triple A is somewhat different than that which is offered by the protestants. As indicated, it is an alternative type of service which Triple A offers the public in conjunction with the use of multi-level rail cars and one for which a need has been shown. The protestants, in the examiner's opinion, have not shown that they presently provide a comparable service.

The examiner concludes that the restriction against the transportation of any traffic having a prior movement by rail be eliminated from Triple A's Sub 1 certificate to meet the changed conditions in which a segment of the used automobile shipping public prefer the alternative use of rail for the long hauls in moving their cars; also to meet the desire of such shippers to deal with one organization, and to meet their desire to continue using Triple A's service on a single line basis. Considering the evidence as a whole, the examiner concludes that the application in No. MC-125808 (Sub-No. 2) be granted partially to the extent that the existing certificate in No. MC-125808 (Sub-No. 1), issued December 23, 1966, be amended by eliminating therefrom any restriction against the transportation of traffic having prior movement by rail, and that in other respects the application in No. MC-125808 (Sub-No. 2) should be denied. Under such amended certificate there would be no restrictions against transportation of shipments having a prior movement by rail and no restrictions on shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, with the possible exception of those shipments in which a freight forwarder uses prior water carrier service; and, of course, the restrictions against traffic moving on government bills of lading, or traffic moving to automobile dealers would be retained therein because no need has been shown in No. MC-125808 (Sub-No. 2) for the movement of used cars on government bills of lading or of any need for the transportation of used cars to dealers. In the examiner's opinion the evidence does not justify any other restrictions being made applicable to the extension of service which Triple A proposes.

With respect to the freight forwarder application in No. FF-359, the examiner concludes that sufficient evidence has been offered herein to sustain a finding that the proposed service will be consistent with the public interest and the national transportation policy as required by section 410 of the Interstate Commerce Act. In *D. C. Andrews & Co. of Illinois, Inc.*, 326 I.C.C. 743, the Commission stated at page 755 that "an applicant for forwarder authority is required to make an initial showing of prima facie need for the proposed service", and that "It is then incumbent upon the protesting forwarders to refute this showing by establishing, subject to subsequent rebuttal by applicant, their qualifications and willingness to provide the required service." In the instant proceeding a number of shippers support the freight forwarder application, and indicate they would use the proposed service. Such shipper support is substantial; and the application, as amended, is not opposed by any freight forwarder. While it is true that the freight forwarder application is opposed by certain motor carriers the adequacy and availability of motor service does not bar the institution of a freight forwarder service of a character not at present being offered. See *Goldberg Freight Forwarder Application*, 285 I.C.C. 239, 243.

The evidence offered by Auto Trip establishes that there is a trend for some used automobile shippers, individual and volume consignors, to avoid the use of driveaway service for long-haul trips. As previously indicated, the supporting shippers prefer to deal with one organization in obtaining service from the origins to destinations. Auto Trip proposes to satisfy a public need, and on this record there is no showing that a freight forwarder service comparable to that proposed herein is presently available. Auto Trip may have some problems initially in establishing the desired transit time by use of the multi-level cars but they are not of such nature that they can not be worked out with proper cooperation and coordination of service between the railroads involved and Auto Trip. Certainly, it is to the railroads' advantage to provide prompt multi-level car service; otherwise, Auto Trip would undoubtedly use motor common carrier truckaway operations to provide the alternative service required by the shipping public, in which case some of the protestants herein, authorized to provide truckaway transportation, might benefit therefrom. There is evidence that Auto Trip has been assured by certain railroad representatives that multi-level cars are available, and it is evident that rail terminal facilities for loading and unloading used automobiles are established at a certain number of limited points. It was not necessary, in the examiner's opinion, to have a railroad representative at the hearing to confirm these facts because the availability of multi-level rail cars does not necessarily mean that multi-level cars might not be in short supply on certain occasions during peak demands, or that they could not be used over certain rail rights of way, or that the rail terminals handling such equipment would not be overtaxed on some occasions. Also, there may be occasions when Auto Trip's accumulations of used automobiles are so small that use of truckaway would be justified rather than rail service. The success or failure of any new venture is based on many variable factors, and the denial or grant of Auto Trip's application should not depend on the possibility that some shippers might not want applicant to use the multi-level rail cars on long hauls instead of motor service. The proposed service of Auto Trip is a flexible one, and, as indicated, used car shippers have more than one alternative. Certainly, if the application is denied, Auto Trip would never have an opportunity to show whether it could provide service expeditious enough to meet the needs of the supporting shippers by use of multi-level rail cars for long hauls, and the mere possibility that this particular service might not live up to expectation in all cases is no basis for a denial.

In analyzing the evidence offered by protestants, it is clear on a collective basis, that they rely considerably on new automobile traffic moving from manufacturers; on automobiles that are transported to dealers, and those moving on government bills of lading. While it is true that certain protestants have considerable investments in terminals and equipment, it is apparent that justification for establishing such terminals and obtaining such equipment is dependent to a considerable extent, if not principally, on their participation in the transportation of new automobiles, automobiles moving to dealers, and those moving on government bills of lading. Although they depend on some used-automobile traffic, the evidence they have offered concerning their participation in such used car shipments is not sufficient to justify a conclusion that they would be adversely affected to any material extent by a grant of the Auto Trip application or that they could assemble and consolidate used automobiles better and more efficiently without the intervention of a freight forwarder service as proposed herein. Auto Trip has offered proof of a public interest factor, and the examiner concludes that this applicant has met the statutory burden of showing that the service it proposes would be consistent with the public interest and the national transportation policy. The examiner further concludes that the evidence offered by protestants is not sufficient to justify a finding that the existing service is adequate to meet the needs of the supporting shippers.

If Auto Trip obtains the freight forwarder permit recommended herein, it should be emphasized again that it could not use Triple A to transport any used automobiles moving on government bills of lading or those moving to automobile dealers, if the recommendations of the examiner in No. MC-125808 (Sub-No. 2) are followed.

The examiner is informed on brief that the ability of certain motor carriers of automobiles to conduct their secondary driveaway operations more economically than the conventional automobile carrier has resulted in Transporters Association filing a petition in Ex Parte MC-74. In that proceeding the Commission apparently is being requested to establish certain rules and regulations with respect to so-called "casual" driveaway service and to make such type of operation a separate classification of motor carrier service. What effect the determinations in that Ex Parte proceeding will have on Triple A, if any, would be speculation, and the examiner does not believe anything would be accomplished here by discussing that rule-making proceeding further, other than to repeat that Triple A has an effective certificate in No. MC-125808 (Sub-No. 1) which is limited already to used automobiles, and that such certificate is presently and will be in the future, if the examiner's recommendations are followed, further restricted against transporting traffic to dealers, and against transporting traffic moving on government bills of lading and that having a prior movement by water.

Triple A's certificate also includes specifically the right to transport personal effects and sporting equipment, which permits Triple A to establish rates applicable on such articles, including released rates, and this affords proper protection to both Triple A and the used automobile shippers. In *Phillips Common Carrier Application*, 68 M.C.C. 324, 326 (one of the cases cited by National Trucking), Division 1 concluded that a grant of authority for the transportation of house trailers, in secondary movements, if not subject to any contrary restriction or limitation to particular contents such as scientific apparatus, permits the transportation of the ordinary contents of such trailers, including personal effects of the owner or occupants. Based on this decision and certain others of a somewhat similar nature,[5] protestants transport personal effects left in the used automobiles they transport. It appears, however, that where a motor carrier has specific authority to transport personal effects as well as the used automobiles, it is difficult for such carrier to disclaim responsibility for security of the articles carried, and under section 20(11) of the act it cannot limit its liability, except by maintaining rates dependent upon value declared by the shipper or agreed on as the released value. See No. MC-125978 (Sub-No. 7), *Dependable Car Travel Service, Inc., Extension - Used Automobiles*, decided September 6, 1968 (not printed), by Review Board No. 1.

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[5] *Convoy Co., Extension - California*, 49 M.C.C. 527 and *Johnny's Auto & Truck Towing, Inc.*, 82 M.C.C. 683.

As indicated herein, Triple A had revenue of slightly in excess of one million dollars in 1968, a net profit of about $140,000 for that year, and undistributed profits of about $142,000 at the end of that year. Auto Trip, the subsidiary, as shown, had assets of about $11,000 at the end of July 1969. Considering the underlying rail freight charges shown herein, which Auto Trip expects to pay in conjunction with use of the multi-level cars, the prospective charges it anticipates collecting from used automobile shippers, and the other evidence herein, the examiner is of the opinion that Auto Trip can conduct its proposed operations on a profitable basis.

With respect to the common ownership or control by Triple A of Auto Trip, this situation is not prohibited. In section 411(g) of the act it is stated, among other things, that "nothing in this Act shall be construed to make it unlawful for any common carrier subject to Part I, II, or III of this Act, or any person controlling such a common carrier, to have or to acquire control of a freight forwarder***." Also, see *Ownership of Stock in Freight Forwarders*, 265 I.C.C. 73, and *Cal[illegible] Exp. Co., Inc.,-Control and Merger*, 67 M.C.C. 379. The examiner concludes that Auto Trip is ready, able and willing properly to perform the service described in the findings herein in FF-359, and that a permit therein should be issued authorizing Auto Trip to perform such service. The examiner further concludes that Triple A is fit, willing and able, financially and otherwise, properly to perform the extension of service authorized in the findings herein in No. MC-125808 (Sub-No. 2) and that its certificate No. MC-125808 (Sub-No. 1), issued on December 23, 1966, should be amended as set forth in such findings herein.

Suggested or requested findings not discussed herein nor reflected in the examiner's findings or conclusions have been considered and found not justified.

FINDINGS

In No. FF-359 the examiner finds that service by Auto Trip USA, Inc., as a freight forwarder, in interstate commerce, of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States, using facilities of common carriers by railroad, express, water or motor vehicle, will be consistent with the public interest and the national transportation policy; that applicant is ready, able and willing properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that a permit authorizing such service should be granted.

In No. MC-125808 (Sub-No. 2) the examiner finds that the present and future public convenience and necessity require that the certificate of AAACON Auto Transport, Inc., issued on December 23, 1966 in No. MC-125808 (Sub-No. 1) should be amended by deleting from sheet No. 2 of said certificate the following:

> "The authority granted herein is restricted against the transportation of any traffic (1) having a prior movement by rail or water, (2) moving on government bills of lading, or (3) moving to automobile dealers."

and substituting in lieu thereof the following:

> "The authority granted herein is restricted against the transportation of any traffic (1) having a prior movement by water, (2) moving on government bills of lading or (3) moving to automobile dealers."

The examiner further finds that an amended certificate should be issued in No. MC-125808 (Sub-No. 1) reflecting the modification described above; that applicant is fit, willing and able properly to perform such extension of service to be authorized in the amended certificate and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that the application in No. MC-125808 (Sub-No. 2), in all other respects, should be denied.

In view of the findings herein, the examiner recommends that the appended orders be entered.

By Donald R. Sutherland, Hearing Examiner.

(Signature) Donald R. Sutherland

APPENDIX

PERTINENT IRREGULAR-ROUTE MOTOR COMMON CARRIER AUTHORITY HELD BY PROTESTANTS WHICH OFFERED EVIDENCE IN OPPOSITION.

Auto Driveaway - Certificate No. MC-125985 authorizes transportation of passenger automobiles, with the baggage, sporting equipment, and personal effects of the owners thereof, in secondary movements, in driveaway service, between points in 16 named States, on the one hand, including New York, Florida, Illinois and California, and, on the other, points in the United States, excluding Hawaii. The certificated authority is restricted, among other things, against transporting (1) vehicles moving on United States government bills of lading and (2) traffic having a prior or subsequent movement by rail.

Pontell - Certificate No. MC-3468 includes right to transport used automobiles, (1) in driveaway service, in secondary movements, between points in a number of States, the District of Columbia, Cleveland, Ohio, Erie, Pa., Buffalo, N. Y., the Chicago, Ill., Commercial Zone, and certain Michigan manufacturing and assembly points, (2) in driveaway or truckaway, in secondary movements, between points in a number of New England States, and (3) in truckaway service, in secondary movements, between points in a number of States, the District of Columbia, Cleveland, Erie, Buffalo and certain points of manufacture and assembly in Michigan.

Dependable - Certificates Nos. MC-125978 (Sub 4) and (Sub 5) authorize transportation of used passenger automobiles, with or without baggage and personal effects, in driveaway service, (1) between New York, New Jersey, Connecticut and Pennsylvania, on the one hand, and, on the other, points in the United States, except Alaska and Hawaii, and (2) between Florida, on the one hand, and, on the other, points in the United States, except Connecticut, Hawaii, New York, New Jersey and Pennsylvania. These certificates are restricted, among other things, against transporting (a) vehicles moving on government bills of lading and (b) traffic having an immediately prior or subsequent movement by rail.

Insured Transporters - Certificate No. MC-107227 includes right to transport automobiles, in driveaway, in secondary movements, between 13 States in the west, northwest, southwest and west coast. Certificate MC-107227 (Sub 31) includes right to transport repossessed automobiles, in truckaway, between 11 of the States named in MC-107227, on the one hand, and, on the other, Washington, D. C., and 32 States, with certain point restrictions. Certificate MC-107227 (Sub 36) includes right to transport (1) used automobiles, in truckaway and driveaway, in secondary movements, between a specified part of California, on the one hand, and, on the other, certain States in the northwest, west and southwest, and (2) automobiles that have been abandoned, embezzled, repossessed, stolen and wrecked, in driveaway and towaway, between points in the United States.

Motor Convoy - Certificate MC-3581 (Sub 1) includes right to transport (a) automobiles, in driveaway and truckaway, in secondary movements, between Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee, subject to certain restrictions on traffic moving from Guntersville, Ala., and Memphis, Tenn., and originated at Detroit and Toledo destined to the Carolinas, and (b) automobiles and paraphernalia between the same 7 States named in (a) immediately above, with a restriction against transporting parts and accessories. Certificate MC-3581 (Sub 4) authorizes transportation of automobiles, in driveaway and truckaway, in secondary movements, between a plantsite near Hapeville, Ga., on the one hand, and, on the other, Texarkana, Tex. Certificate MC-3581 (Sub 8) includes right to transport automobiles, in truckaway, in secondary movements, between North Carolina, Virginia and West Virginia. Certificate MC-3581 (Sub 12) includes right to transport automobiles, in truckaway, in secondary movements, between Mobile, Ala., and points in Louisiana, with a qualified no-tacking restriction. Certificate No. MC-3581 (Sub 11) includes right to transport automobiles in secondary movements, from Nashville, Tenn., to Kentucky, Virginia and West Virginia, and MC-3581 (Sub NO. 6) includes right to transport automobiles in driveaway and truckaway, in secondary movements, from a plant site at Hapeville, Ga., to points in Arkansas, Kentucky and Missouri. The authority in Sub 6 and 11 can be joined with that described in Sub 1 to perform through service.

National Trucking - Certificate No. MC-117206 includes right to transport automobiles, in truckaway or driveaway, in secondary or subsequent movements, between Jacksonville, Fla., and points in Florida and that part of Georgia on and south of U. S. Highway 78.

Nu-Car - Certificate No. MC-22182 includes right to transport automobiles, in driveaway in secondary movements, between certain New England States, New Jersey and New York, (2) between Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia, (3) between Delaware, Ohio, Florida, North Carolina, South Carolina, Georgia and Connecticut, and (4) between Virginia, Maryland, West Virginia, Pennsylvania and the District of Columbia, on the one hand, and, on the other, New Jersey, New York, Delaware, Ohio, Florida, North Carolina, South Carolina, Georgia and Connecticut. This certificate authorizes driveaway service between points in the States from Maine to Florida along the Atlantic Seaboard, including Vermont, Pennsylvania, West Virginia and Ohio. Additionally, Nu-Car's certificate authorizes automobile truckaway, in secondary movements, between points in this same territory.

Sober - Certificate No. MC-8989 includes right to transport used automobiles, in driveaway, in secondary movements, between points in the United States, except Duluth, Minn. Additionally, the same certificate authorizes truckaway service, in secondary movements, between points in 27 States and the District of Columbia, covering generally, New England, the Middle Atlantic, and Midwestern parts of the United States, and the area near the Great Lakes.

Automobile Transport - Certificate No. MC-87928 includes right to transport used automobiles, in truckaway and driveaway, between points in 10 States located generally in the midwest, southeast and south, and a specified part of western Pennsylvania. Certificate No. MC-87928 (Sub-No. 40) includes right to transport used automobiles, in truckaway and driveaway, (1) between points in 8 States and the District of Columbia, (2) between Delaware and Rhode Island, and (3) between Delaware and Rhode Island, on the one hand, and, on the other hand, the District of Columbia and the 8 States referred to in (1) above, which includes New York, Pennslyvania, Virginia and 5 other States located in the east and New England. By using western Pennsylvania as a gateway area, Automobile Transport can tack the MC-87928 authority described above and the Sub 40 authority to perform through service. Apparently Virginia could be used as a gateway area also since it is authorized to be served in both certificates.

Dealers Transit - Certificate No. MC-4405 includes right to transport used automobiles, in driveaway, in subsequent or secondary movements, between points in the United States, except Alaska, Arizona, Hawaii, Nevada, Oregon and Vermont, with an exception relating to traffic moving between plant sites or other facilities of a certain automobile manufacturer in the Chicago, Ill., Commercial Zone and 5 midwest States.

Recommended by Donald R. Sutherland
Hearing Examiner

(Signature) Donald R. Sutherland

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1,
held at its office in Washington, D. C., on the
day of , A. D. 1969.

No. FF-359

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by the examiner, who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted.

It is ordered, That upon full compliance with the requirements of sections 403 (c) and (d), 405 and 416 (a) of the Interstate Commerce Act, and with the Commission's rules and regulations thereunder, a permit be issued to applicant authorizing operation in the manner described in the findings in the said report.

It is further ordered, That unless compliance is made by applicant with the requirements of sections 403 (c) and (d), 405, and 416 (a) of the act within 90 days after the date of service of a notice to the parties that this order has become effective as the order of the Commission, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

And it is further ordered, That this order shall be effective on

By the Commission, division 1.

H. NEIL GARSON,

(SEAL) Secretary.

Recommended by Donald R. Sutherland
Hearing Examiner

(Signature) Donald R. Sutherland

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1,
held at its office in Washington, D. C., on the
day of , A. D. 1969.

No. MC-125808 (Sub-No. 2)

AAACON AUTO TRANSPORT, INC., EXTENSION - DRIVEAWAY FOR PRIOR RAIL MOVEMENTS

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by the examiner, who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, and with the Commission's rules and regulations thereunder, an amended certificate be issued to applicant in No. MC-125808 (Sub-No. 1) authorizing extension of operation, in interstate or foreign commerce, as a common carrier by motor vehicle in the manner described in the findings in the said report.

It is further ordered, That the application in all other respects be, and it is hereby, denied.

It is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217 and 221(c) of the act within 90 days after the date of service of a notice to the parties that this order has become effective as the order of the Commission, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

And it is further ordered, That this order shall be effective on

By the Commission, division 1.

H. NEIL GARSON,
Secretary.

(SEAL)

Exception No. V - The Examiner erred in expressing the opinion (sheets 27-28) that Triple A may already substitute rail service for a portion of the driveaway movement which it is authorized to perform.

Exception. No. VI - The Examiner erred in recommending authority so broad as to permit Triple A to join with the rail carriers in any sort of through movement.

Exception No. VII - The Examiner erred in failing to recognize that the territorial scope of the application in No. MC-125808 (Sub-No. 3-TA) for temporary authority evidences that the territorial scope of the instant application by Triple A is obviously excessive.

ARGUMENT IN SUPPORT OF EXCEPTIONS

By certificate issued under date of December 23, 1966, Triple A, in response to the decision in AAACON Drivers Exchange Common Carrier Application, 102 M.C.C. 393, rendered June 28, 1966, was granted common-carrier authority to transport used passenger automobiles, in driveaway service, in secondary movements, with or without baggage, personal effects, and sporting equipment, between points in the United States, including Alaska and excluding Hawaii, restricted against the transportation of any traffic (1) having a prior movement by rail or water, (2) moving on government bills of lading, or (3) moving to automobile dealers (Ex. No. 1). In the decision in question appears the following at page 400:

> The transportation of automobiles by persons or corporations, such as the applicant herein, has grown in recent years to major proportions. In Bell Transp. Co., Inc., Extension - Florida, 96 M.C.C. 264, decided October 15, 1964, the Commission, division 1, extensively reviewed the transportation of passenger automobiles by carriers using casual drivers. It noted that the tremendous growth of this phase of transportation was being handled by persons

> not holding interstate authority, that occasional shippers are not in a position to make use of the services offered by carriers whose operations are designed to meet the requirements of large commercial shippers, and that the latter carriers exerted little effort to generate the kind of traffic involved herein. *** Applicant does not propose a new service but desires to continue an operation which Irving Zola [2] has been conducting at least since 1958. Users of its service have found it satisfactory and desire its continuance.

Having obtained the above-described authority, however, shaped to the needs of the individual shippers of used automobiles, Triple A, with its coadjutor, Auto Trip, would so broaden its authority as to empower it to transport used automobiles in mass movement and thus to enter a field which it has never occupied in all the years of its operations, first illegal and subsequently legal by reason of the decision just cited. What heretofore has been at least closely akin to a "casual ** transportation of ** property" [3] and so bearing scant resemblance to the operations of the carriers which, in the language of the Bell case, "are designed to meet the requirements of large commercial shippers," would take on virtually all the characteristics of the operations of these latter -- among them those in behalf of which the instant exceptions are tendered. And yet, curiously enough, the very evidence by virtue of which the Examiner would grant this extensive broadening does not differ in essence from that which resulted in the grant by the Commission of the present authority of Triple A. We respectfully submit that the authority of Triple A should remain unchanged and the mass movement of passenger automobiles left to the various protestants herein, which are fully equipped and capable of meeting any needs of the individual shippers. Neither Triple A nor Auto Trip has met the burden of proof cast upon it by the statute; the Examiner fell into damaging error in finding to the contrary.

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[2] The president and sole stockholder of Triple A.

[3] Section 203(b)(9) of the Act.

There is the further fact, of which the Examiner has apparently been wholly unmindful, that his recommendations would enable Triple A to substitute for a part of its authorized driveaway operation a rail operation which is nothing more than a truckaway operation on steel rails. We find no warrant for this. Clearly enough, driveaway and truckaway operations are separate and distinct "breeds of cat", as the Commission has invariably found. A driveaway of a given wheeled item moving in commerce is basically a movement of the item itself along the surface of the highway. Truckaway of used automobiles, to the contrary, is a movement of the wheeled item aboard another vehicle. Rail transportation is likewise a movement aboard a separate and distinct vehicle -- a railroad flat car. Under no circumstances, then, could a substituted movement by Auto Trip, using the facilities of a railroad, be deemed as corresponding to or congruous with a driveaway movement. There can be no least question that the Examiner would here authorize a hybrid operation for which no need has been shown and for which there is no legal prop.

[illegible]

[illegible]

It is for the foregoing reasons, among others, that we have urged in Exceptions Nos. IV and V, herein above, that the Examiner erred in failing to recognize that his proposed findings run counter to the philosophy of those previous findings of the Commission with which his proposed findings would be integrated and that he erred additionally in finding that Triple A may already substitute rail service for a portion of the driveaway movement which it is authorized to perform.

It cannot be overlooked, either, that the findings of the Examiner are so broad in scope and character as to enable Triple A to endeavor to join with the rail carriers in joint operations for which there is no evidentiary support. The record contains nothing in the way of agreement by the railroads to operate in any type of joint (rather than substituted) service.

And, lastly, in further support of our Exception No. II, herein above, we ask that the Commission take official notice of the application by Triple A in No. MC-125808 (Sub-No. 3-TA), wherein the Commission's Motor Carrier Board denied Triple A temporary authority (sustained by Division 1, acting as an Appellate Division, under date of December 24, 1969) to operate as a common carrier, over irregular routes, of used passenger automobiles, with or without baggage, personal effects, and sporting equipment, between points in Florida, in and south of Pinellas, Hillsborough, Polk, Osceola, and Indian River Counties, on the one hand, and, on the other, points in Nassau, Suffolk, Westchester, and Rockland Counties, N.Y., and New York, N.Y., those in New Jersey, those in Connecticut west of the Connecticut River, and those in the Philadelphia, Pa., commercial zone, subject to the restriction it should be limited to utilization of rail substituted service between railroad trailer-on-flatcar ramps in Miami and Tampa, Fla., and railroad trailer-on-flatcar ramps in New York, New Jersey, and Philadelphia, Pa. Not only did Triple A urge in No. MC-125808 (Sub-No. 3-TA) that there was an immediate and urgent need to replace with a rail substituted service the very driveaway service found in the Bell case to be required by the present and future public convenience and necessity between substantially the same territories as those under consideration in No. MC-125808 (Sub-No. 3-TA), but, more importantly yet, this segregation from the remainder of the United States of the described territory as one in which temporary authority should be granted is the best possible evidence that Triple A's real interest lies in this smaller area of the East. This is confirmed, too, by the paucity of evidence in the instant case concerning the remainder of the United States[4].

4/ See sheets 8-11 of our opening brief.

CONCLUSION AND PRAYER

The instant proceeding simmers down to nothing more than an effort by Triple A, without proof of need, to enlarge its chosen field by entering into direct competition with protestants and other qualified and authorized automobile haulers for what is truly truckaway transportation of multiple units. The Examiner has fallen into egregious error in failing to balk that effort.

WHEREFORE, we respectfully request that the Commission reject the findings of the Examiner and find instead (1) that Triple A does not now hold authority to perform the proposed service; (2) that Triple A has not established that the present and future public convenience and necessity require the proposed service; and (3) that Auto Trip has not established that its proposed service will be consistent with the public interest and the national transportation policy.

Respectfully submitted,

F. J. Boutell Driveaway Co., Inc.,
Nu-Car Carriers, Inc.,

Protestants,

By Wilmer B. Hill,
Wilmer A. Hill,

Their attorneys.

Of counsel:
Ames, Hill & Ames,
666 Eleventh Street, N.W.,
Washington, D. C. 20001.

Dated at:
666 Eleventh Street, N.W.,
Washington, D. C. 20001,
January 30, 1970.

EXCEPTION NO. 1

THE HEARING EXAMINER ERRED IN RECOMMENDING A GRANT OF FREIGHT FORWARDER AUTHORITY SINCE NO SUBSTANTIAL NEED FOR THE PROPOSED SERVICE WAS SHOWN.

The broad grant of freight forwarder authority to Auto Trip between all points in the United States is not justified by the record in view of the general, speculative, and equivocal testimony of the ten (10) supporting shippers. Many witnesses expressed the opinion that if the proposed freight forwarder service required two or three weeks, they would continue to use driveaway service, (Pages 16, 17, and 18 of R&RO[2/]).

The Applicant failed to make any showing of shipper need between the multitude of origins and destinations which would be authorized if the broad authority sought is granted. In those instances where Applicant indicated specific origin and destination points, e.g., between New York and California, the Applicant failed to show sufficient traffic available to support a freight forwarder service.

Only one witness testified as to any possible use of a freight forwarder service _from_ New York _to_ California. _M. Luth_,

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[2/] Refers to Report and Recommended Order.

employed as general manager of Fred Waring's Pennsylvanians, testified as to the possibility of moving 2 automobiles between New York and California (R309-325)[3/]. This testimony of Mr. Luth appearing for Fred Waring should be completely disregarded. Mr. Luth did not know that Applicant's proposed freight forwarder service would require consolidation of his employer's two cars with those of other shippers and would require substantial time in transit (R316). The witness had reservations as to the possible use of the proposed freight forwarder service (R316).

The commercial auto shippers, namely, Alexander's Rent-A-Car and Olin of N.Y., Inc., gave vague testimony as to a possible use of freight forwarder service from California to New York, but did not show any need for a movement of used automobiles from New York to California (R192-260, 325-345). Nor did the testimony of E. R. Squibb & Sons, Inc., show any need for a freight forwarder service from New York to California, (R345-369).

Typical of the type of speculative testimony received in this proceeding was that of M. King (R369-393). The Examiner in reviewing the testimony of this witness stated:

[3/] Refers to page of transcript of hearing.

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> He indicated that he might travel to California in the future for a 3 week visit, and that he would consider using the proposed freight forwarder service, in conjunction with rail transportation. (Page 15 of R&RO) Emphasis supplied.

Such testimony has no probative value. No finding of need for a freight forwarder service can be made on the basis of a witness' testimony that he "might" use the freight forwarder service at a "future time". It also is beyond credibility that a person would transport his own car 6,000 miles to and from California, at a substantial cost, for a 3 week visit in California.

The total evidence introduced by the Applicants to prove a need for freight forwarder service from New York to California amounted to the possible movement of 2 automobiles owned by Fred Waring, to California. A close analysis of the shipper testimony shows a definite lack of traffic and no need for a freight forwarder service from New York to California.

Applicants have failed to sustain their burden of proof and in view of the weak and speculative evidence adduced in this proceeding, the applications should be denied.

EXCEPTION NO. 2

THE HEARING EXAMINER ERRED IN RECOMMENDING GRANT OF AUTHORITY TO AUTO TRIP AS A FREIGHT FORWARDER BETWEEN POINTS IN CONNECTICUT, MASSACHUSETTS, RHODE ISLAND, NEW YORK, NEW JERSEY, AND PENNSYLVANIA, ON THE ONE HAND, AND, ON THE OTHER, POINTS IN FLORIDA.

The evidence introduced by the Applicants fails to prove a need for freight forwarder service between points in Connecticut, Massachusetts, Rhode Island, New York, New Jersey, and Pennsylvania, on the one hand, and, on the other, points in Florida.

Only five (5) witnesses appeared in support of the application between the above-named northeastern states and the State of Florida. All of these witnesses were individuals who own a private car. W. M. Sigman has occasion to ship one car from New York City to Miami Beach, Florida and return each year (R502-516). S. Blumberg has occasion to go to Florida once a year from New York (R460-502). H. Yagoda has occasion to ship his car from Wayne, New Jersey to Miami, Florida, and return once a year (R393-408). M. King has occasion to ship once a year from Brooklyn, New York to Miami, Florida and return (R369-393). A. Goodman has occasion to ship one or two cars between Hartsdale or Brooklyn, New York and Hollywood, Florida, and return (R260-296). S. Levy lives in Brooklyn, New York and travels to the Miami, Florida area several times a year (R296-307).

This is the extent of the evidence to justify a need for a freight forwarder service between the northeastern states and the State of Florida. The number of cars involved herein, totaling not more than six, would not even permit a consolidation for movement via a single multi-level rail car. On the other hand, in the Dependable Car and Dependable Auto applications, 39 individual shippers testified in support of a need for freight forwarder service between the northeastern states and Florida (Docket FF-349, R75-518).

Dependable Car and Dependable Auto filed its applications on July 26 and July 29, 1968, respectively, more than five months before the applications filed by the Applicants in this proceeding.

The Commission, Division I, by its Decision and Order dated December 17, 1969, granted the following authority to Dependable Auto and Dependable Car:

> FF-349 (Dependable Auto Shippers, Inc.)
>
> freight forwarder of used passenger automobiles, with or without baggage and personal effects, between points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, and Pennsylvania, on the one hand, and, on the other, points in Florida, restricted against the transportation of traffic (1) moving on government bills of lading, and (2) moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers.

> MC-125978 (Sub No. 8) (Dependable Car Travel Service, Inc.)
>
> common carrier, by motor vehicle, over irregular routes, of used passenger automobiles, in single driveaway service, with or without baggage and personal effects, (1) between points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania, and (2) between points in Florida, restricted in (1) and (2) above (a) to shipments having an immediately prior or subsequent movement in freight forwarder service, (b) against the transportation of vehicles moving on government bills of lading, and (c) against the transportation of vehicles on behalf of manufacturers of new automobiles except licensed vehicles transported for use of personnel of manufacturers, and provided that the authority granted herein, to the extent it duplicates any other authority held by applicant, shall not be construed as conferring more than a single operating right.

In the instant proceeding, the Hearing Examiner expressed some doubts as to the availability of traffic and the availability of multi-level rail cars in connection with the freight forwarder service proposed by Applicants. The Examiner stated as follows:

> Also, there may be occasions when Auto Trip's accumulations of used automobiles are so small that use of truck-away would be justified rather than rail service. (Page 31 of R&RO) Emphasis supplied.

The proposed freight forwarder service is untried and untested. To be successful, the freight forwarder must be able to consolidate at one time from 10 to 12 cars on a multi-level rail car. The availability of used passenger automobiles to perform this consolidation is of extreme importance.

Dependable was the first to propose this freight forwarder service. It has been granted authority to institute operations as a freight forwarder by virtue of the Decision and Order of Division I, dated December 17, 1969. It should first be given the opportunity to implement this proposed forwarder service between the northeastern states and Florida before a new competitor, such as the Applicants, is licensed by the Commission to enter this field.

The grant of authority to the Applicants would only serve to dilute the available traffic for freight forwarder service; substantially affect Dependable's ability to perform the consolidations which are necessary in order to furnish an efficient and economical forwarder service, and will bring about destructive competition. All of the foregoing would be clearly against the public interest.

The Commission should withhold the grant of any additional freight forwarder authority until such time as Dependable is given sufficient opportunity to conduct operations as a freight forwarder (D.C. Andrews & Co., 326 I.C.C. 743).

EXCEPTION NO. 3

THE HEARING EXAMINER ERRED IN RECOMMENDING GRANT OF FREIGHT FORWARDER AUTHORITY TO AUTO TRIP WITHOUT THE IMPOSITION OF ANY RESTRICTIONS.

The Hearing Examiner's Report recommends the grant of freight forwarder authority to Auto Trip as a freight forwarder in interstate commerce of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States, using facilities of common carriers by railroad, express, water, or motor vehicle.

This proposed grant is without any restrictions, and would enable Auto Trip to handle, in freight forwarder service,

1) traffic moving on government bills of lading, and

2) traffic moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers.

No evidence, whatsoever, was adduced by Auto Trip as to the need for a freight forwarder service for traffic moving on government bills of lading or traffic moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers. This broad grant of authority would enable Auto Trip to engage in a freight forwarder service for which no need was shown by the evidence[4].

On the other hand, in the application of Dependable Auto Shippers, Inc., Docket FF-349, Division I imposed the following restrictions:

> 1) Against the transportation of traffic moving on government bills of lading;
>
> 2) Against the transportation of traffic moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers.

For the purpose of uniformity, the Commission should attach the same restrictions to the grant, if any, of freight forwarder authority to Auto Trip, as imposed by Division I, in the grant of authority to Dependable Auto Shippers, Inc., (FF-349).

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[4] The Examiner found that no need has been shown in MC-125808 Sub 2 (Triple A) for the movement of used cars on government bills of lading or of any need for the transportation of used cars to dealers (Page 30 of R&RO).

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EXCEPTION NO. 4

THE HEARING EXAMINER ERRED IN FAILING TO FIND THAT TRIPLE A DOES NOT HAVE THE AUTHORITY TO PERFORM A RAIL SUBSTITUTED SERVICE UNDER ITS PRESENT MOTOR CARRIER CERTIFICATE.

After discussing the authority held by Triple A under its present certificate MC-125808 Sub No. 1, the Report makes the following statement (Page 28 of R&RO):

> Nevertheless, it must be recognized here that the transportation of automobiles, in initial and secondary movements, involve some unique problems, that the conclusions in the *Piggyback* case are at variance with some of the reasoning in the *NATA* case, and that as long as the Sub 1 certificate of Triple A contains the prior-movement-by-rail restriction it will be vulnerable to the contention that motor carrier service by Triple A beyond the break-bulk railhead or rail distribution points is excluded when Triple A substitutes rail for motor transportation on the long hauls.

It is respectfully submitted that Triple A cannot perform a rail substituted service under its present motor carrier authority. In Docket No. 35147, Division 2, by order dated August 1, 1968, found that Triple A was offering a rail substituted service that exceeded the scope of its operating authority. Petition for reconsideration is now pending.

The Commission, in its decision in *National Auto Trans. Association*, 91 M.C.C. 395, at 410, in discussing situations involving motor carriers who held restrictions in their

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operating authorities, stated as follows:

> Similarly, where an irregular route carrier must maintain a gateway, or is restricted against tacking at certain points, unlimited substitution would permit a motor common carrier to totally avoid its certificate limitations and thus provide a service not contemplated, and, indeed, specifically prohibited in many instances, by the original grants of initial authority. (Emphasis supplied)

It is, therefore, clear that the decision (Nat'l Auto Trans. Assn.) upon which Triple A relies upon to support its contention is not in point, but, on the contrary, clearly shows the intent of the Commission to enforce certificate restrictions such as held by Triple A.

A typical motor carrier movement utilizing rail substituted service involves a movement from A (origin) to D (final destination), with rail substituted service between the intermediate points of B (rail terminal) and C (rail terminal) and the issuance of a motor carrier bill of lading from A to D (Nat'l Auto Trans. Assn., 91 M.C.C. 395 at 409 and 410).

Triple A's certificate is restricted against the transportation of any traffic having a prior movement by rail or water. This restriction prohibits Triple A from transporting, as a motor common carrier, a shipment from point C (rail terminal) to point D (final destination). In the Auto Driveaway Company, Common Carrier Application, 100 M.C.C. 724, as modified by the Commission's order of July 18, 1966, a somewhat similar restriction was imposed to prevent the applicant from transporting automobiles in a joint rail-motor service. The conclusion is inescapable that Triple A cannot perform a lawful rail substituted service in connection with its present operating authority.

Triple A's certificate also contains a restriction reading "in driveaway service". "Driveaway service" is defined as a movement whereby a vehicle, comprising a portion of the shipment, furnishes the motive power for the transportation, (*Nat'l Auto Trans. Assn.*, 91 M.C.C. 395 at 399, 400). It is obvious that when Triple A places a used passenger automobile on a *rail car*, it is not engaging in a "driveaway service" as provided in its certificate.

EXCEPTION NO. 5

THE HEARING EXAMINER ERRED IN RECOMMENDING THAT TRIPLE A'S PRESENT CERTIFICATE RESTRICTION "HAVING A PRIOR MOVEMENT BY RAIL", BE ELIMINATED.

The Hearing Examiner recommended that the certificate issued to Triple A in Docket MC-125808 Sub No. 1, be amended by deleting from its authority the restriction against the transportation of any traffic "having a prior movement by rail" (Pages 33 and 34 of R&RO).

The Hearing Examiner committed serious error as the proposed deletion of the restriction exceeds the scope of the authority as requested by the Applicant, as published in the Federal Register and as shown by the evidence in this proceeding.

The application, as published in the Federal Register of January 24, 1969, in Docket MC-125808 Sub No. 2, AAACon Auto Transport, Inc., sought authority to operate as a common carrier by motor vehicle over irregular routes, transporting used passenger automobiles, with or without baggage, personal effects, and sporting equipment, in driveaway service, in secondary movements, between points in the United States, restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having a prior movement by rail.

It is apparent that the Hearing Examiner did not realize the significance of deleting the present restriction in Triple A's certificate (MC-125808 Sub No. 1), reading "having a prior movement by rail".

Without such restriction, Triple A, as a motor common carrier, would be able to use rail substituted service under its present certificate between all points in the United States. It would be in a position to transport used passenger automobiles in rail substituted service; perform assembly and consolidation; break-bulk and distribution operations in the same manner as its affiliate Auto Trip would be able to perform as a freight forwarder.

Shipments moving under Triple A's motor common carrier certificate in rail substituted service would move under its motor carrier rates and bill of lading. At the same time, Auto Trip, as a freight forwarder, will be able to move shipments by rail in a similar type of service, under different freight forwarder rates.

This would enable Triple A and Auto Trip to maintain a dual level of rates as a motor carrier and a freight forwarder furnishing the same type of service, in violation of the Commission's regulations.

As both Applicants would be in a position to maintain a

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different level of rates, one as a freight forwarder and one as a motor carrier, using rail substituted service; the Applicants would have an opportunity to engage in discriminatory and other undesirable practices in violation of the Interstate Commerce Act.

In the Dependable Car Travel Service, Inc., application, Docket No. MC-125978 Sub No. 8, Division I imposed the following restrictions:

> Restricted (a) to shipments having an immediately prior or subsequent movement in freight forwarder service, (b) against the transportation of vehicles moving on government bills of lading, (c) against the transportation of vehicles on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers, and provided that the authority granted herein, to the extent that it duplicates any other authority held by applicant, shall not be construed as conferring more than a single operating right.

The restriction "to shipments having an immediately prior or subsequent movement in freight forwarder service" in the Dependable Car application prevents the establishment of a dual level of rates by the motor carrier and freight forwarder and eliminates the opportunity to engage in discriminatory practices. This similar restriction should be imposed on any grant of authority to Triple A.

3. The Examiner erred in considering the evidence of commercial shippers as a basis of support for an application of a casual driveaway operator, AAACon Auto Transport, Inc.

The Examiner should have found that the commercial shippers are adequately being served by existing authorized carriers.

4. The Examiner erred in finding that existing service would not be adversely affected by a grant of the authority requested by both applicants.

The Examiner should have found that existing carriers would be adversely affected by a grant of the applications.

III.
ARGUMENT

The Examiner has failed to understand the distinctions between a casual driveaway operator - AAACon - and the protestant carriers using professional drivers. His failure to understand has been compounded into recommended grants of authority to both applicants which deviate from established Interstate Commerce Commission decisions.

Since protestants filed with the Commission an extensive Brief Prior to Examiner's Report, reference to which is herein prayed, suffice to say that the original grants of authority to casual driveaway carriers, including AAACon, were based upon the fact that there had been a tremendous growth in the transportation of used automobiles for individual owners having occasional movements who were not in a position to make use of the services offered by regular carriers whose operations and rates were designed to meet the requirements of large commercial shippers. (See Bell Transportation Co., Inc., Extension - Florida, 96 M.C.C. 264; AAACon Driver's Exchange, 102 M.C.C. 393.) Restrictions were placed in the certificates of such casual driveaway carriers to whom authority was granted by the Interstate Commerce Commission for the purpose of protecting existing regular carriers from diversion of traffic. One such restriction contained in the certificate granted to AAACon is against the handling of traffic having a prior movement by rail.

Although it was undoubtedly intended that the casual driveaway carrier such as AAACon would serve the individual owners, the evidence shows that AAACon is serving large commercial shippers and often in volume movements. AAACon has actually been obtaining traffic from large commercial shippers which may have been tendered to protestants but for the favorable competitive position enjoyed by AAACon because it does not undertake the financial and related obligations arising from an employer-employee relationship, such as the payment of salaries, vacation and other benefits, negotiations with labor unions, taxes, and the like.

There is no question but that the traffic of such shippers is needed and wanted by protestants which is reflected by the Examiner in his summary of various protestants' testimony. One small bit of protection which protestants had was the restriction granted by the Commission preventing AAACon from handling traffic having a prior movement by rail which protection the Examiner has removed although his report repeatedly shows how important the protestants deem this traffic.

Times have changed; protestants, of necessity, have a greater dependence on secondary movements. (See Examiner's Report, Sheet 24). It may be that AAACon had gone about as far as it could go even with its favored competitive position, in diverting traffic which otherwise could be handled by protestant carriers. The evidence in this proceeding establishes, as stated by the Examiner at Sheet 30 of his Report, "that there is a trend for some used automobile shippers, individual and volume consignors, to avoid the use of driveaway service of long-haul trips." Protestants contend that if this is the case, they should have an opportunity to serve such shippers before the restriction in AAACon's certificate is removed or before Auto Trip receives a permit to act as a freight forwarder of used automobiles.

There are no complaints against the services of existing motor carriers. Actually the evidence shows, for the most part, that the witnesses have never used the services of authorized carriers other than AAACon and have not even investigated the availability of existing truckaway service or rail-motor service such as offered by protestants. All the shippers know is that they are dissatisfied with the casual drivers and do not want their vehicles driven long distances. They have heard that applicant proposes to have their automobiles transported by rail instead of being handled by casual drivers.

Whatever happened to the principle that there must appear to be a need for a proposed service that can not be met by existing authorized carriers? Why should AAACon be permitted to further divert actual existing traffic or potential traffic by having the restriction removed from its certificate? Certainly not because of anything in the record in this proceeding. There is no evidence whatsoever of protestants' failure to provide an ex rail service and certainly not between the points mentioned by the individual shippers.

The Examiner's report indicates that the witness for Motor Convoy testified that 80% of the motor vehicle traffic transported is ex rail (Examiner's Report - Sheet 22). The National Trucking witness indicated that his company is interested in retaining the used car traffic it moves from the railheads and believes some of this traffic might be diverted if AAACon obtains the authority sought (Examiner's Report - Sheet 22). The Insured Transporter's witness testified that he was fearful of diversion if AAACon obtained the authority (Examiner's Report - Sheet 21) and the witness for Howard Sober, Inc. stated that removal of the restriction against handling shipments having an immediately prior movement by rail would permit AAACon to offer its services to commercial shippers and provide added competition in view of the present and potential use of rail multi-level cars for transporting automobiles. It regards competition of casual driveaway companies as unfair and destructive as respects commercial shippers in the regular or recurring business of shipping automobiles, indicating that the casual driveaway companies are able to offer their service at cheaper rates. Because of the cheaper rates it believes that one group of commercial shippers would enjoy cheaper transportation charges than are required to be paid by others, if the casual driveaway companies are not limited to the individual casual shippers. (Examiner's Report - Sheet 24).

There is no basis for the removal of the restriction in the certificate of AAACon on this record. While it is difficult to keep the application of AAACon and the application of Auto Trip separate since the latter is owned and controlled by the former, an attempt must be made if we are to clearly examine the possible results of the Examiner's recommendations.

If the AAACon restriction is removed, the traffic which may be diverted is not only the traffic which the Examiner must imagine will be handled by Auto Trip via rail with AAACon making ultimate delivery from the rail destination to the final destination, but also any used automobile traffic for any non-governmental shipper not destined to a dealer anywhere in the country. In view of the favored position of AAACon because of its minimum expenses and ability to charge cheaper rates to commercial shippers, this carrier has the wherewithal to divert more traffic than an ordinary competitor. Few shippers are unconcerned about rates.

This situation was feared and predicted by Examiner Jerome K. Soffer in Auto Driveaway Company, Extension - Points in the United States, MC-125985 (Sub. No. 4) served November 29, 1967, quoted at length in the Brief filed prior to the Examiner's Report. Examiner Soffer indicated that in view of the virtually complete turnaround in the support base from the individual to the commercial shipper, inquiry might have to be made as to the exact status of the driver whose free services form the backbone of applicant's ability to provide a cheaper service to commercial shippers. He denied the application but raised the question, "should casual driveaway service be authorized to serve principally such commercial shippers and, because of its inevitable lower labor costs, to inhibit and perhaps to undermine the pattern of transportation represented by truckaway and professional driveaway carriers? Based upon the trends apparent from the testimony in this case from the applicant, the protestants and the supporting shippers, the foregoing are questions which, among many others, may well have to be faced in the future."

Examiner Sutherland refused in these proceedings to face these questions, ignoring the distinction between individual owner shippers and commercial shippers. Undoubtedly, in reaching his conclusion that the proposed operation of Auto Trip as a freight forwarder of used automobiles throughout the United States is consistent with the public interest and the national transportation policy, and in reaching his conclusion that the AAACon restriction should be deleted, the Examiner must have been influenced by the testimony of the commercial shippers. He could not have reached such conclusions from the evidence presented by the individual owners. As summarized in protestants' Brief filed prior to the Examiner's Report, the testimony of the private automobile owners shows an occasional movement basically between points in the New York City area, on the one hand, and points in Florida, and certain points in California, on the other. There was insufficient evidence upon which to base a grant of any authority.

It is the commercial witnesses' testimony that must have been the basis of the Examiner's grant territorially, and such testimony shows that all movements are strictly of a commercial nature and include volume movements, such as automobiles returning to Chrysler, GM or Ford Leasing Companies. The repossession of automobiles by the Rent-A-Car companies for whatever purpose and the return volume movements to Chrysler, GM and Ford Leasing Companies is entirely a business obligation of these firms, and the movement of automobiles by a corporation to and from various business locations throughout the country is strictly in the business interests of the company. All these are purely and simply commercial operations, and there is no reason why these commercial shippers should not try the services of protestants in truckaway movements for long-haul transportation before a new service is authorized.

It is not possible to predict with any certainty the extent of a competitive impact of a grant of freight forwarder authority to Auto Trip upon existing automobile handling motor carriers. The existing automobile carriers serve a wide variety of small shippers as well as large commercial shippers. The small shippers often tender one or two automobiles to the carriers for transporting them, and the performance of an efficient and economical service requires that the automobile carriers consolidate such small shipments with other small shipments so that trailer loads may be handled in truckaway service and into three-way and four-way movements in driveaway service (Exhibit 33). If the automobile traffic is to be siphoned off by freight forwarders and allocated to casual driver motor carriers such as AAACon, the regular automobile motor carriers serving the public will be handicapped in making consolidations of such small shipments. In order to continue to consolidate, the automobile carriers depend upon a volume of such small shipments so that they may combine such small shipments with others going from substantially the same origin to substantially the same destination. From the very nature of "used" automobiles, there can be no "consolidation" of shipments except that of assembling and marshalling for joint loading or movement (Exhibit 33).

Automobile transporters for years have been performing the assembling and marshalling without the intervention of a freight forwarder and have been working with the railroads to provide a substituted service in TOFC and MLRC. The Commission has long recognized the consolidation activities of the automobile carriers under certain circumstances, and sanctioned them in National Automobile Transporters Association - Petition for Declaratory Order, 91 M.C.C. 395, by rejecting the argument of the freight forwarders that the Commission decision would "permit every motor carrier to become a freight forwarder without regard to the requirements of Section 402(a)(5), without obtaining a freight forwarder permit under Section 410, and contrary to Parts I and II of the Act. When the automobile transporters make consolidations or joint loadings of two or more shipments, each shipper gets the benefit of the unit charge for a part of the trailer load or combination movement. The existing carriers are now performing an adequate and satisfactory alternative service in the transportation of used automobiles.

The Examiner correctly indicates in his Report that motor common carriers in truckaway operations provide an alternative service for the shipping public. Although, as he states at Sheet 29, the service proposed is somewhat different than that which is offered by protestants, there is nothing on this record to show that said alternative service is inadequate.

Protestants contend that the Examiner failed to balance the evidence properly and erred in recommending a permit to Auto Trip and in cancelling the restriction for AAACon. Protestants are aware that the standards for a freight forwarder permit differ from those required for a certificate or permit of a carrier under Part II of the Interstate Commerce Act but, nevertheless, existing alternative services must be considered. Recently Review Board No. 3, in dealing with a general commodity freight forwarder application, denied the application because the need for additional service was questionable (Honolulu Freight Service - Extension - San Francisco, FF-276, Sub. No. 1, August 7, 1969), and in an earlier case, Frank P. Dow Co., Inc., Extension - Longview, 322 I.C.C. 103 (1964), the Commission denied general commodity forwarder authority after undertaking a comprehensive analysis of the legislative history saying at 113:

> "It is obvious that to grant forwarder authority in the face of adequate existing service would frustrate the purpose of Congress in amending Section 410(d) so as to avoid wasteful duplication of existing facilities. See the Jensen case, supra, and the West Coast case, supra, at page 127. We would qualify the foregoing somewhat, however, in that while we may deny an application for the sole reason that existing service is adequate, it is not required that we deny authority in situations where there is proof of a public interest factor of equal or dominant importance. Nonetheless, adequacy of existing service is a 'vital factor' and 'most frequently' of controlling importance."

Protestants contend that adequacy of existing service, a "vital factor", was ignored by the Examiner in recommending freight forwarder authority between points in the United States.

Acknowledging the Commission distinction between support by individual owners and support by commercial shippers, the individual owners provided testimony concerning a few possible movements between points in the New York City area, on the one hand, and points in Florida and California, on the other, as summarized in Protestants' Brief aforementioned. Such evidence is not not sufficient upon which to grant an application. Further, if any authority is to be given to either applicant, it should be restricted to traffic tendered as single, privately-owned or privately-leased, non-commercial used automobiles. Additional authority would be unjust, would frustrate the purpose of Congress and the national transportation policy and would not avoid wasteful duplication of existing facilities.

IV.

CONCLUSION

Considered in its most favorable light, the evidence fails to support the Examiner's finding that the proposed services of Auto Trip as a freight forwarder of used automobiles are consistent with public interest and the national transportation policy. Likewise, the evidence fails to support the Examiner's finding that the restriction in AAACon's certificate pertaining to traffic having a prior movement by rail should be deleted. The evidence presented by individual owners is meager and fails to justify the grant of authority to either applicant recommended by the Examiner. Existing service is adequate to handle the ex rail traffic proposed by AAACon and has not been tried by commercial shippers supporting the application of Auto Trip to provide freight

NO. FF-359[1]

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION

Decided August 25, 1970

1. In No. FF-359, proposed service by applicant as a freight forwarder of used passenger automobiles, with or without baggage and personal effects, between points in the United States (except Alaska and Hawaii) found to be consistent with the public inetrest and the national transportation policy.

2. In No. MC-125808 (Sub-No. 2), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, in driveaway service, with or without baggage and personal effects, between points in the United States (except Alaska and Hawaii), subject to restrictions. Modification recommended by examiner of existing authority in No. MC-125808 (Sub-No. 1) found not warranted.

3. Issuance of an appropriate permit and certificate approved upon compliance by each respective applicant with certain conditions, and applications in all other respects denied.

Morton E. Kiel for applicants.

Edward M. Alfano, *Wilmer B. Hill*, *Eugene C. Ewald*, *Harry Ross*, *Albert F. Beasley*, and *Wilmer A. Hill* for protestants in both proceedings.

Thomas D. Shea for protestants in No. FF-359.

Eugene C. Ewald for interveners in opposition to the application in No. FF-359.

Martin Sack for protestant in No. MC-125808 (Sub-No. 2).

Bill R. Davis, *Paul M. Daniell*, and *Harry Ross* for interveners in opposition to the application in No. MC-125808 (Sub-No. 2).

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[1] This report also embraces No. MC-125808 (Sub-No. 2), AAACON Auto Transport, Inc., Extension—Driveaway for prior Rail Movements.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, DEASON, AND GRESHAM

GRESHAM, *Commissioner:*

These proceedings involve related issues, were heard on a consolidated record, were the subject of a single report and separate recommended orders by the examiner, and will be disposed of here in one report. Exceptions to the orders recommended by the examiner were filed in both proceedings by certain protestants and opposing interveners, and by protestant Motor Convoy, Inc., in No. MC-125808 (Sub-No. 2); and applicants jointly replied. Our conclusions differ in part from those recommended.

In No. FF-359, by application filed December 11, 1968, as amended, Auto Trip USA, Inc., of New York, N. Y. (auto trip), seeks a permit under section 410 of the Interstate Commerce Act authorizing operation as a freight forwarder, in interstate commerce, through the use of facilities of common carriers by railroad, express, water, or motor vehicle, in the transportation of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States. Applicant is a subsidiary of AAACON Auto Transport, Inc., of New York, N. Y. (AAACON). The motor common carriers named in footnote 2 and Dependable Auto Shippers, Inc., a freight forwarder, oppose the application. In addition, Automobile Transport, Inc. (AT), Dealers Transit, Inc. (Dealers), Kenosha Auto Transport Corporation (KAT), and the National Automobile Transporters Association (NATA), were permitted to intervene at the hearing in opposition to the application.

In No. MC-125808 (Sub-No. 2), by application filed December 26, 1968, AAACON seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, with or without baggage, personal effects, and sporting equipment, in driveaway service, in secondary movements, between points in the United States, restricted to shipments having an immediately prior or subse-

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[2] Auto Driveaway Company, F. J. Boutell Driveaway Co., Inc., Dependable Car Travel Service, Inc., and Howard Sober, Inc., Acme Fast Freight, Inc., International Forwarding Co., National Carloading Corporation, Republic Carloading & Distributing Co., Inc., and Universal Carloading & Distributing Co., withdrew their opposition upon amendment of the application to its present form.

quent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having a prior movement by rail. The application is opposed by the motor common carriers identified in footnote 3 and Dependable Auto Shippers, Inc. In addition, AT, Dealers, KAT and NATA were permitted to intervene at the hearing in opposition to the application.

Applicant Auto Trip proposes to provide freight forwarder service for movements of used passenger automobiles, with or without baggage, personal effects, and used sporting equipment, between points in the United States. Its proposal calls for the delivery of individual shipments of used automobiles to assembly points by customers or AAACON in driveaway service; the consolidation by Auto Trip at the assembly points of a number of individually tendered vehicles to form volume shipments; the arrangement by Auto Trip of transportation of the volume shipments to distribution or break-bulk points by rail, water, and motor common carriers. Upon arrival at the break-bulk points, possession of the volume composite shipments will be taken and arrangements made by Auto Trip with AAACON's driveaway service for sorting and delivery of the individual shipments to ultimate consignees. With respect to transportation by underlying rail carriers, multilevel rail cars (MLRC) will be utilized.

Applicant AAACON is a transporter of used automobiles in driveaway service "utilizing casual or non-professional drivers." It moves automobiles generally using drivers who wish to defray the expense of their own traveling by driving a car from one place to another for a car owner. Its certificate No. MC-125808 (Sub-No. 1), issued December 23, 1966, authorizes the transportation of used passenger automobiles, in driveaway service, in secondary movements, with or without baggage, personal effects, and sporting equipment, between points in the United States, restricted against the transportation of any traffic (1) having a prior movement by rail or water, (2) moving on government bills of lading, or (3) moving to automobile dealers.

AAACON's proposal in the embraced proceeding would not affect its commodity and territorial authorizations. It seeks to

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[3] Baker Driveaway Company, Inc., Gate City Transport Co., M & G Convoy, Inc., The Motor Convoy, Inc., National Trucking Company (which assertedly withdrew its opposition on November 20, 1969), Nu-Car Carriers, Inc., Square Deal Cartage Co., and Insured Transporters, Inc., and Auto Driveaway, Boutell, Dependable Car Travel, and Sober. Insured Transporters and Motor Convoy were permitted to intervene by order dated March 25, 1969.

eliminate from such authorities the above proscriptive restrictions (1), (2), and (3). In lieu of (1), it would substitute a restriction which would limit its transportation of the involved traffic to "shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading, or to shipments having prior movement by rail." In this connection AAACON explains that the purpose of the proposed revision of (1) is to obtain a determination (a) that the present restriction is not applicable when it employs rail service as a substitute for motor service for the transportation of long-haul shipments presumably between assembly and break-bulk points, and (b) does not preclude it from transporting the individual shipments in its driveaway service at the end of the rail portion of the substituted service. The proposed elimination of restrictions (2) and (3) would enable AAACON to transport the considered shipments when moving on Government bills of lading and those moving to automobile dealers.

In the title proceeding, the examiner recommended that the application be granted. In the embraced proceeding, he recommended that AAACON's certificate (Sub-No. 1) be modified by eliminating therefrom the restriction against "the transportation of any traffic having a prior movement by rail." He further recommended that the embraced application be otherwise denied. Thus, no change was recommended in the Sub-No. 1 restrictions against the transportation of traffic (1) having a prior movement by water, (2) moving on Government bills of lading, or (3) moving to automobile dealers.

In support of his finding respecting the striking of the prior-movement-by-rail limitation, the examiner concluded that because of changed conditions a segment of the used automobile shipping public prefers the alternative use of rail service for long-haul transportation of vehicles; and that the findings in *National Auto. Transporters Assn.–Declaratory Order*, 91 M.C.C. 395 (the *NATA* case), and *Substituted Service–Piggyback*, 322 I.C.C. 301, affirmed *sub nom, American Trucking v. A., T. & S. F. Ry. Co.*, 387 U. S. 397, (the *Piggyback* case), do not bar AAACON from substituting rail service for its driveaway service for a portion of the transportation between points in the United States. In apparent deference to the proceeding in No. 35147,[4] however, the examiner admitted that the rail-haul restriction is susceptible to the interpretation that motor service by AAACON beyond the rail break-bulk point is proscribed when AAACON so substitutes rail-for-motor-service on long hauls, and he therefore recommended the elimination of that restriction.

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[4] In No. 35147, *Local Freight Tariff MF-I.C.C. No. 5, Issued by AAACON Auto Transport, Inc.*, division 2, by order of August 1, 1969, authorized the striking from the Commission's files of AAACON's tariff which offers a service alleged (footnote continued on next page)

On exceptions, the motor carrier protestants and interveners specified in footnote 5 individually and collectively contend that the applications should be denied, and that the examiner erred (1) in finding that a need exists for the proposed freight forwarder service and that such service will be consistent with the public interest and the national transportation policy; (2) in concluding, in the embraced proceeding, that AAACON may "substitute" MLRC rail service for its authorized driveaway service; (3) in finding that the present and future public convenience and necessity require the elimination, from AAACON's Sub-No. 1 certificate, of the restriction against the transportation of traffic having prior movement by rail.

With respect to (1) it is argued that the general proposition—that the adequacy of motor carrier service is no bar to the institution of forwarder service—does not apply in the absence of a prima facie showing of need of the shipping public for the proposed forwarder service; that the evidence of the 10 supporting shippers is conjectural and speculative and fails to establish a need for the proposed broad territorial forwarder service; that the essence of the shipper testimony relates merely to dissatisfaction with motor driveaway service; that consistency with the public interest and the national transportation policy requires, clearly, the protection of existing motor carriers and freight forwarders from unnecessary and harmful competition; that the examiner has failed to consider the evidence in the light of these principles; and that, accordingly, the examiner's findings respecting a grant of forwarder authority are improper and should not be approved.

(footnote 4 continued)
to exceed its present operating authority. By order of September 16, 1969, the proceeding was reopened for the purpose of considering AAACON's petition for reconsideration of the order of August 1, 1969. Interveners' position in that proceeding is that AAACON's certificate Sub-No. 1, by reason of the prior-rail-haul restriction, precludes the use of rail service in connection with AAACON's authorization of driveaway service, and, therefore, the said tariff provision which offers substituted rail service for driveaway motor service is without the scope of AAACON's authority.

[5] Exceptions were filed separately by Sober and by Motor Convoy and jointly by (a) Dependable Car Travel and Dependable Auto Shippers, (b) Boutell and Nu-Car and (c) NATA, At, Baker, Dealers, KAT, M & G, Gate City, and Square Deal. Nu-Car and M & G are protestants in the Sub-No. 2 proceeding only. Motor Convoy excepts solely to the examiner's recommendation in the embraced proceeding.

In connection with (2) above, it is pointed out that the Commission consistently has distinguished "driveaway" from "truckaway" and "towaway" services; see the *NATA* case, *supra*, pages 399 and 400; that the rules and regulations promulgated in the *NATA* and *Piggyback* cases relate to the substitution of rail-for-motor service in connection with new motor vehicles in initial movements, and to the conclusion that plan III trailer-on-flatcar (TOFC) service is a true substituted rail-for-motor service and that plan I TOFC service is a joint-line rail-motor service;[6] and that no rules and regulations governing the substitution of rail-for-motor driveaway service were discussed or promulgated in the *NATA* and *Piggyback* proceedings. Protestants argue that any rules and regulations promulgated in these cases do not prevail over the prior-movement-by-rail-or-water restriction which, they insist, proscribes AAACON from engaging in the substitution of rail-for-motor *driveaway* service.

With respect to (3) above, the motor carrier protestants point out that AAACON's Sub-No. 1 certificate was granted on a showing of need for a wholly motor driveaway service which arose from the tremendous growth in the casual transportation of automobiles for individual owners. See *AAACON Drivers Exchange, Common Carrier Application*, 102 M.C.C. 393. They contend that by the instant application AAACON seeks to perform a wholly different service, i.e., to utilize Auto Trip, its affiliate, to transport volume shipments for predominantly commercial shippers, and MLRC service in substitution for its driveaway service between railheads on the proposition that many shippers do not like to have their automobiles driven long distances and that casual drivers are not always available; that the supporting shipper evidence is entirely conjectural and speculative and fails to demonstrate any present or future need for the proposed broad territorial driveaway service from or to railheads; that, significantly, AAACON's evidence of shipments handled by its driveaway service does not support a need for the authority here sought; that adequate service from existing carriers is presently available, particularly from railheads; and that such service should be protected from a new competitive service. Those protestants designated in footnote 5(a) argue that any authority granted should be restricted (1) territorially, to traffic between points in the New York, N. Y., commercial zone, on the one hand, and, on the other, points in Florida and California, and (2) to traffic tendered as single, privately owned or privately leased, noncommercial, used automobiles.

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[6] A full discussion of the TOFC plans will be found in the *Piggyback* case, 322 I.C.C. at pages 309-312.

Protestants Dependable Auto Shippers, Inc. (Auto Shippers) and Dependable Car Travel Service, Inc. (Dependable), contend that the deletion of the restriction against the transportation of traffic "having a prior movement by rail," as recommended, exceeds the scope of the authority requested by either applicant, as published in the Federal Register, and is without evidentiary support. They contend that, in the alternative, if any authorities are granted they should be restricted so as not to duplicate the recently granted freight forwarder authority to Dependable and the motor common carrier authority granted to Auto Shippers in FF-349 and the embraced proceeding, No. MC-125978 (Sub-No. 8),[7] respectively. They aver that they should be given the opportunity to implement operations in their authorized areas before new competitors are permitted to enter the field. As a further alternative, they submit (1) that any freight forwarder authority granted to Auto Trip should be restricted against (a) traffic moving on Government bills of lading, and (b) against traffic moving for, from, or on behalf of, manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers, and (2) that any motor carrier operating rights granted to AAACON should be restricted to shipments moving in freight forwarder service.[8]

In reply, applicants argue that the basic purpose of the applications is to obtain authority for Auto Trip to operate as a freight forwarder and to remove the restriction against traffic having a prior movement by rail; that the examiner's recommendations, if approved, would enable AAACON to provide transportation to and from the assembly and distribution points without question as to whether the prior-movement-by-rail restriction would proscribe the movement by underlying rail carriers of shipments in the service of the freight forwarder-Auto Trip, and also would render moot the issue of whether rail service may be substituted for AAACON's present driveaway service pursuant to its Sub-No. 1 certificate; that the evidence reflects that the supporting shippers, representing leasing companies, are concerned with movements with which protestants are concerned; that there is no evidence to support protestants' contentions that their services would be harmed by applicants' proposed operations; that a need for the proposed services has been demonstrated; and that the examiner's recommendations are supported by the evidence and the law, and should be approved.

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[7] The authorities granted to Dependable and Auto Shippers are set forth in appendix A.

[8] Motor Convoy also seeks the same restriction on any authority granted to AAACON.

The evidence, the examiner's recommendations, the exceptions, and the reply have been considered. We find the examiner's statement of facts, pertinent portions of which are reproduced in appendix B to this report, to be correct in all material respects; and we adopt it as our own. Those matters raised or discussed in the exceptions or reply and not specifically discussed herein have been considered, and found to be not determinative of the issues involved.

DISCUSSION AND CONCLUSIONS

We shall first examine the examiner's apparent conclusion that under AAACON's certificate that carrier is not precluded from utilizing rail MLRC service for a portion of its authorized driveaway service. We do not find any support for that determination in either the *NATA* or *Piggyback* cases. The *NATA* case concluded, as pertinent, that the use by motor carriers of TOFC plans I and III[9] did not destroy the "initial characteristics" of the automobile movement.

In the *Piggyback* case, the entire Commission concluded in prescribing rules 2 and 3, among others, that:

> when TOFC service is offered by a rail carrier to the public generally, there is nothing to preclude its use by motor or water common or contract carriers, in lieu of their all-highway operations in the performance of *authorized transportation* (underscoring ours) between *** service points, ***. 322 I.C.C. at page 336.

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[9] TOFC service, generally, is performed in a motor-rail motor combination, and involves the transportation of a laden highway trailer upon a rail flatcar as a portion of an intermodal through movement. TOFC plan I provides for a motor-carrier service at all-motor rates on a motor carrier bill of lading, with the railroad moving the trailers in so-called substituted service for the motor carrier, over part of the motor carrier's route, at the motor carrier's option. The trailers are furnished by the motor carrier.

Under TOFC plan III the railroad provides a ramp-to-ramp service, the trailers usually are owned or leased by the shipper, delivered to the ramp by the shipper or its agent (possibly a motor carrier), and, subsequent to the rail movement, are turned over to the shipper or its agent. The railroad furnishes only a transportation service between its TOFC ramps. It places and secures the trailers onto flatcars at the origin ramp and unloads the trailers from the flatcars at the destination ramp. The service is available to private shippers, freight forwarders, and motor carriers.

Rules 2 and 3 thus provide, as pertinent, that motor common and contract carriers may utilize TOFC service in performing all or any portion of their authorized service through the use of so-called open tariffs of rail carriers.

As a practical matter those rules permit the motor carrier to assemble, consolidate, transport by piggyback, and distribute the cargo from the railhead without the prior concurrence of the railroad, i.e., under the so-called open-tariff provisions. Subsequently, in Ex Parte No. 230 (Sub-No. 1), *Substituted Service–Piggyback*, 337 I.C.C. 5 (1970), the entire Commission compared TOFC and MLRC services[10] and stated at page 10:

> Although, as heretofore indicated, MLRC service is not analogous to TOFC service by plan identification, the open and negotiated tariff structures are common to both. No valid reason exists, for the purpose of identifying "initial" and "secondary" movements of new automobiles, to treat any differently those that move under open-tariff arrangements by either TOFC or MLRC, or those which move under joint-rate or negotiated tariffs under either of these intermodal arrangements. We therefore conclude that a true substituted rail-for-motor service is provided under MLRC open-tariff provisions, and that joint intermodal service is performed under MLRC joint-rate or negotiated rate tariffs.

Thus, the usual motor common carrier which is authorized to transport automobiles, in initial or secondary movements without further limitations on the type of service, is not precluded from utilizing rail service to move its shipments. *American Trucking v. A., T. & S. F. Ry., supra.*[11] In AAACON's Sub-No. 1 certificate, the authority granted is confined to operation as a motor common carrier of "used passenger automobiles * * *, in secondary movements in driveaway service," and the essential question here is whether the further limitation "in driveaway service" bars AAACON's use of underlying rail service.

In *Danbury Extension of operations–Charlotte, N. C.*, 46 M.C.C. 147 (1946), it was recognized that when the vehicles being transported are moved with motive power furnished by one or more of such vehicles, the service is driveaway; and in the *NATA* case, *supra*, at pages 399-400, the Commission distinguished motor

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[10] MLRC service, developed to meet the particular needs of the automobile industry, involves either rail-motor, or motor-rail-motor movements, and automobiles so transported are carried upon specially constructed rail cars.

[11] Therein, at page 419, the Supreme Court held that the Interstate Commerce Act cannot be construed to require that the trucker transport its cargo exclusively by highway.

"driveaway" from motor "truckaway" service, and generally reiterated the conclusions in *Danbury*. The "driveaway" limitation thus defines the type of *service* that the common carriers may provide; i.e., the motive power must come from a vehicle being shipped and not be furnished by the carrier or carriers. As a consequence, we think it evident that rail service, in which the motive power is provided by the carriers and not by the shipper, may not be utilized by a motor carrier holding only driveaway authority. Moreover, the *further* restriction in AAACON's Sub-No. 1 certificate against the transportation of traffic having a prior movement by rail or water, prohibits participation by AAACON in a joint service performed under joint rates in connection with either rail (which would include plan I or plan V TOFC service) or water. As a result, we believe that AAACON's authority must be construed as requiring *either* an over-the-highway driveaway movement from and to points between which assumption of responsibility for the safe transportation of the traffic is undertaken by AAACON, *or* an over-the-highway driveaway movement performed by AAACON in connection with any transport mode other than rail or water.

The grant of such authority was based on a record which established that applicant has been providing an inherently sporadic service geared to persons who seek the casual transportation of their used automobiles. See *AAACON Drivers Exchange, supra*. As a result the certificate plainly provides that the authority is restricted to a special service, i.e., a casual driveaway operation, and the failure to comply with the certificate terms would constitute operations outside the scope of the authority. Stated otherwise, the authority conferred upon AAACON is transportation in motor driveaway service from origin to destination, and such transportation must be provided by the carrier in order to comply with the terms of its certificate. It necessarily follows that movement of the involved traffic by rail is not driveaway service in conformity with the certificate's terms, and that AAACON may not substitute rail MLRC service for its authorized driveaway service.

The Freight Forwarder Application.—We come now to consideration of the freight forwarder application. The burden of proof is upon an applicant to show that the proposed service is, or will be, consistent with the public interest and the national transportation policy. In *D. C. Andrews & Co. of Illinois, Inc., Ext.–Baltimore, Md.*, 326 I.C.C. 743, 755, it was pointed out that although the "public interest" criterion is not the equivalent of the "public convenience and necessity" test, a forwarder applicant must still show a prima facie need for the proposed service and, if such showing is made, it is then incumbent upon protesting forwarders to refute this by demonstrating their own qualifications and willingness to perform the required service.

In our opinion, applicant has failed to establish any public need for the proposed service to and from points in Alaska and Hawaii, but otherwise a review of the evidence of record convinces us that the examiner's conclusions and findings, as modified herein, are proper and correct in all material respects. The evidence abundantly establishes that many shippers require a forwarder service capable of handling their shipments in a manner which would alleviate the "wear and tear" incident to over-the-highway (driveaway) movement involving long distances. There is also persuasive evidence that the various supporting shippers need, and are entitled to the advantages and benefits of freight forwarder service whereby a single transportation agency is engaged to undertake the transportation of their vehicles from shipping point to ultimate destination. In this regard, it is axiomatic that a viable freight forwarder service requires broad operating authority.[12] *Republic Carloading and Distr. Co., Inc., Ext.–Nationwide*, 285 I.C.C. 641, 653. Although Dependable Auto, the sole opposing forwarder, was recently granted authority to handle a portion of the traffic involved, it did not oppose this application actively at the hearing but merely submitted a copy of a statement relating to its then pending application, and was granted permission to leave the hearing room. In the absence of evidence of its methods of operation, and ability or traffic studies showing operations which need to be protected, we must conclude that Dependable Auto had failed to show that it would be materially adversely affected by the grant of the authority set forth in our findings below. With respect to the motor carrier protestants, we are fully cognizant of their substantial capital outlays for equipment and facilities, but it is sufficient to note that the availability of motor carrier service should not bar the institution of a freight forwarder service of a character not at present being offered. See *Goldberg Freight Forwarder Application*, 285 I.C.C. 239, 243;

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[12] Under section 413 of the Interstate Commerce Act a freight forwarder is deemed to be both the receiving and delivering transportation company. *Kelly Freight Forwarder Application*, 260 I.C.C. 315, 321; and *Southern California Freight Forwarders F. F. Application*, 265 I.C.C. 473, 475, 476.

and *Barge Service Corp. Freight Forwarder Application*, 285 I.C.C. 249, 252. All circumstances considered, we conclude that the grant of freight forwarder authority in the title proceeding to the extent and subject to the restrictions set forth in our findings is warranted and will be consistent with the public interest and the national transportation policy.

Although the application in the title proceeding was amended at the hearing to read "used sporting equipment" in lieu of "sporting equipment," there are no compelling reasons to authorize such transportation. When specific authorization is granted to transport the contents of used passenger automobiles (with the automobile itself) as an incidental service—the only need here shown—the commodity description "baggage and personal effects" is customarily authorized and includes such "sporting equipment" as qualifies as personal effects.

The proposed Driveaway Service.—As heretofore stated, a need has been demonstrated for the overall freight forwarder service proposed by Auto Trip. A grant of the requested motor carrier authority would enable AAACON to facilitate and coordinate its service with its forwarder affiliate to and from assembly and break-bulk points, and thereby applicants will be able to conduct a well-coordinated service for their patrons by utilizing rail MLRC service and AAACON as the underlying carriers. AAACON conducts extensive driveaway operations for its patrons, and the grant of motor carrier authority, as proposed, would enable such patrons to utilize the coordinated motor-rail-motor services as offered by Auto Trip. Protestants have made no showing that they are willing and able to perform the underlying driveaway services required by Auto Trip to and from the rail assembly and break-bulk points. Moreover, inasmuch as the record demonstrates that the proposed motor carrier operation is to serve as an underlying transportation carrier for the proposed freight forwarder operation, it should be limited to traffic moving in the service of a freight forwarder, and a restriction will be so imposed. The absence of any showing by government agencies and automobile dealers of a need for the proposed service, in the circumstances here present, also warrants the imposition of a restriction against the handling of traffic moving on Government bills of lading and to automobile dealers. Further, it would be tautological, in our opinion, to restrict the authority granted to AAACON to "secondary movements" because "used" passenger automobiles should only move in that manner. Accordingly, we conclude that the application in the embraced proceeding should be granted to the extent described in our findings below.

In No. FF-359, we find that service by applicant, in interstate commerce, as a freight forwarder of (1) used passenger automobiles, and (2) baggage and personal effects moving with used passenger automobiles between points in the United States (except Alaska and Hawaii), restricted against the transportation of traffic (a) moving on Government bills of lading, or (b) moving to automobile dealers, will be consistent with the public interest and the national transportation policy; that applicant is ready, able, and willing properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that a permit authorizing such service should be issued.

In No. MC-125808 (Sub-No. 2), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) used passenger automobiles and (2) baggage and personal effects moving with used passenger automobiles, in driveaway service, between points in the United States (except Alaska and Hawaii), (a) restricted to the transportation of traffic moving in freight forwarder service, and (b) against the transportation of traffic, (i) moving on Government bills of lading, or (ii) moving to automobile dealers; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that a certificate authorizing such operations should be granted, subject, however, to the condition that the authority granted herein, to the extent it duplicates any other authority held by applicant, shall not be construed as conferring more than a single operating right; and that the application in all other respects be denied.

Upon compliance by applicant in No. FF-359 with the requirements of sections 403(c) and (d), 405, and 416(a) of the Interstate Commerce Act, and by applicant in No. MC-125808 (Sub-No. 2), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, and with the Commission's rules and regulations thereunder, within the time specified in the order entered concurrently herein, an appropriate permit and certificate will be issued each respective applicant. An appropriate order will be entered.

COMMISSIONER MURPHY did not participate.

APPENDIX 436

APPENDIX A

Authorities of Dependable Auto Shippers, Inc., and Dependable Car Travel Service, Inc.

Dependable Auto Shippers, Inc. (No. FF-349): Operation, in interstate commerce, as a freight forwarder of used passenger automobiles, with or without baggage and personal effects, between points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, and Pennsylvania, on the one hand, and, on the other, points in Florida restricted against the transportation of traffic (1) moving on Government bills of lading, and (2) moving for, from or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers.

Dependable Car Travel Service, Inc., (No. MC-125978 (Sub-No. 8)): Operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, in single driveaway service, with or without baggage and personal effects, (1) between points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania, and (2) between points in Florida, restricted in (1) and (2) above (a) to shipments having an immediately prior or subsequent movement in freight forwarder service, (b) against the transportation of vehicles moving on Government bills of lading, and (c) against the transportation of vehicles on behalf of manufacturers of new automobiles except licensed vehicles transported for use of personnel of manufacturers, and provided that the authority granted herein, to the extent it duplicates any other authority held by applicant, shall not be construed as conferring more than a single operating right.

APPENDIX B

Applicants' evidence

Triple A holds a certificate in No. MC-125808 (Sub-No. 1) issued December 23, 1966, which authorizes irregular-route transportation of used passenger automobiles, in driveaway service, in secondary movements, with or without baggage, personal effects, and sporting equipment, between points in the United States, including Alaska and excluding Hawaii, subject to the following conditions: (1) authority is restricted against the transportation of any traffic (a) having a prior movement by rail or water, (b) moving on Government bills of lading, or (c) moving to automobile dealers, and (2) such authority is subject to the condition that the Commission reserves the right to impose thereon in the future such terms, conditions of limitations as it may find necessary in order to insure that the service authorized is performed in conformity with the Commission's safety regulations.

With respect to the restriction "prior movement by rail" contained in the Sub No. 1 certificate, applicant has published a tariff[1] and presently holds out to provide a motor carrier transportation service under such certificate using substituted rail service with respect to certain specified points. It is Triple A's position that the restriction against transportation of shipments having a prior movement by rail does not apply when it has used substituted service and at the end of the rail portion of the substituted service it moves the used automobiles to their destinations. Triple A cities *National Auto. Transporters Assn.-Declaratory Order*, herein called the *NATA* case, 91 M.C.C. 395, 410 to sustain its position. In that proceeding a ruling was sought as to whether a motor carrier holding initial authority from A to D could transport traffic to B, a nonservice point intermediate to D, load it on a rail flatcar, for handling in TOFC or piggyback service to C, another nonservice point intermediate to D, where it would take possession of the shipment and move it to destination, without first obtaining specific authority either to serve B and C or to operate from C to D. In the *NATA* case it was stated that the use of TOFC plan I by common and contract carrier holders of irregular-route initial authority, under the circumstances discussed in the report, is merely a substitution of rail-for-motor service, does not involve an interchange requiring point-to-point operating authority, and in no way violates the present interpretation of Administrative Ruling No. 75, and that a motor carrier holding irregular-route initial authority between points A and D needs no additional authority to serve rail intermediate points B and C in performing motor-rail-motor through service from A to D. It was concluded in that proceeding that the transportation of new automobiles in an initial driveaway movement from a manufacturing point to a rail point for the purpose of a further movement by rail in multilevel rail cars under the circumstances described therein did not destroy the initial nature of the movement.

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[1] The evidence indicates that Triple A has filed Tariff No. MF-I.C.C. No. 5. Reference to that Tariff shows a rule thereunder on original page 8A providing for substitution of service as follows: "(a) unless the shipper direct that rail service shall not be utilized, carrier may, at its option, substitute rail service between the points and via the rail carriers shown, for its actually available (footnote 1 continued on next page)

Although prior to the hearing in the instant proceedings Triple A had not actually used substituted rail service, it recently, as previously indicated, has filed a tariff covering such operation between certain points. The type of service proposed in the extension application herein by Triple A also includes the pickup of used automobiles using driveaway service and moving them to a freight forwarding assembly point, from which they would be shipped by the freight forwarder using water, rail, or motor service; and at the end of the movement, at the distribution point of the freight forwarder, Triple A would make deliveries under its driveaway authority. If the freight forwarder uses a rail carrier, Triple A is apprehensive that the restriction in its Sub 1 certificate against prior movement by rail might be construed as barring it from performing driveaway service from the rail destination break-bulk point to the consignee delivery location. Although Triple A believes it would be performing transportation for the freight forwarder in such circumstances, it seeks to avoid any question concerning the Sub No. 1 authority and has inserted the wording "restricted to shipments having an immediately prior or subsequent movement by freight forwarder, on a freight forwarder bill of lading" in the extension application. In dealing with the public, Triple A receives

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(footnote 1 continued)

services via highways for which carrier has operating rights as a motorcommon carrier." In the (b) part of Rule 23 in that tariff Triple A lists the points between which rail service will be utilized as Miami, on the one hand, and, on the other, Boston, Mass., Philadelphia, Pa. Washington, D. C., and Little Ferry, N. J. The rail carriers shown to be utilized under the tariff are Penn Central Transportation Company, Richmond, Fredericksburg and Potomac Railroad Co., and Seaboard Coast Line Railroad Company.

inquiries whether it can move used automobiles by utilizing rail and water carrier service as well as by motor transportation, including truckaway service.

The principal or home office of Triple A is located in New York City, and it has branch office locations in about 55 cities. Call stations for telephone answering service are located in six cities. The branch offices are operated by agents, and the majority of the agents employ certain persons on a full or part-time basis to aid them in performing service for Triple A. These employees are used rarely for long-haul over-the-road driving. They are used occasionally to pick up used automobiles at the origins designated by the shippers. Most of the long-haul over-the-road driving of the used automobiles is performed by the casual-type drivers. These casual drivers are used only after they have been screened carefully. Medical examinations of such drivers are required, and Triple A conforms in this respect to applicable Department of Transportation regulations, and each driver is required to have an operator's permit to drive in the State where he lives. Auto Trip also would use the above-described office facilities of Triple A if it obtains freight forwarder authority. Triple A will continue providing long-haul driveaway by motor transportation for those car owners that prefer this type of over-the-road operation. As hereinafter indicated, the price by driveaway all the way from origin to destination would be less than by motor-rail-motor, and in some instances car owners would prefer driveaway all the way by motor for this reason. Also, driveaway all the way by motor, in some instances, may offer quicker delivery.

Triple A offered a traffic exhibit showing that it transported about 2,124 used passenger automobiles in driveaway service from June 1 through July 15, 1969. The District of Columbia and 49 States, including Alaska, are listed on the exhibit, and Wyoming is the only State in which Triple A did not originate or receive cars during that period. No rail transportation was used in substitution of motor carrier service on these shipments. Although Triple A has not moved used automobiles to dealers or traffic moving on Government bills of lading, it apparently would participate in such traffic if the application herein was granted as sought; and, as indicated, it would be able to move used automobiles from the distribution points to which they were transported by rail. The evidence indicates that Triple A has not performed any service for a freight forwarder in the past.

In 1968, Triple A had operating revenue of slightly in excess of 1 million dollars, and a net profit of about $140,000. As of December 31, 1968, it had total assets of $226,533 and total liabilities of $77,257. Its total capital at that time was $149,275, including $142,691 in undistributed profits.

In the freight forwarding service, Auto Trip proposes to hold out its service to the public generally. The primary shippers are expected to be individual automobile owners and small corporate business concerns such as car-leasing companies and finance companies, banks, insurance companies, and industries that require their company-used automobiles moved.

Auto Trip proposes to consolidate used automobiles at a single point. The automobiles would be moved to the assembly point by the car owners or their representatives or by common carrier, and Auto Trip would, as a freight forwarder, tender the automobiles to an "underlying" carrier for movement to a distribution point where the vehicles would be driven away in much the same manner as they came to the origin assembly point. All cities in the United States would be potential assembly and break-bulk points. Auto Trip will assume responsibility for the transportation from origin to destination and will use the uniform straight bill of lading as published in the National Motor Freight Classification. With respect to the term "underlying" carrier, Auto Trip will use all modes of transportation subject to the act to perform the line-haul service, including motor carriers authorized to transport used automobiles in truckaway service. Under freight forwarding authority Auto Trip would be able to consolidate used-automobile shipments and in using truckaway service, obtain a truckload rate. It would also use a water carrier that could barge 20 to 30 automobiles at one time, if such service is available. With respect to pickup and delivery service at origins and destinations, Triple A would be used basically for the driveaway involved. It is not likely that casual drivers would be used by Triple A in performing such pickup and delivery service, and that employees of Triple A or its agents would be used. In travel by driveaway to origins and from destinations Auto Trip would use Triple A to move the cars as far as the circumstances required in making the necessary pickups and deliveries. Auto Trip would use other automobile carriers as well as Triple A for driveaway service and delivery.

In filing the application, Auto Trip points out certain advantages of being able to provide freight forwarding service, and certain evidence was offered relating to these claimed advantages. Casual drivers are not always available in sufficient numbers to move automobiles as fast as the customers desire, and in some instances it is difficult to obtain casual drivers where the automobiles are destined to small towns. This shortage of casual drivers occurs during certain peak periods when a large volume of cars are tendered for shipment, and delays are encountered in making deliveries. By operating as a freight forwarder Auto Trip believes it can offer car owners an "alternate" service and give them some assurance on delivery dates when the automobiles will arrive in the respective destination areas involved. It will meet requests for service by persons who prefer their cars to be carried on the long hauls rather than driven, and reference is made to the possibility of eliminating normal road hazards and wear and tear caused by driving automobiles long distances.

In providing freight forwarding service by rail Auto Trip plans to use trilevel and bilevel cars. Trilevel equipment would be used most of the time, when available, because 12 to 15 automobiles can be loaded on one of these rail cars. Eight to 10 automobiles can be loaded on a bilevel car. In connection with such rail transportation, Auto Trip indicates that there are business concerns at most major railheads which are engaged in loading and unloading service involved in moving automobiles on and off multilevel rail cars. It is estimated that this on-and-off service would total about $5 per automobile. In some instances Auto Trip would use the storage yards now adjacent to railheads to assemble its automobiles. The shippers, if they desire, would be permitted by Auto Trip to pick up or deliver their automobiles at such assembly points.

In addition to the loading and unloading charges, Auto Trip would carry insurance on each automobile, and there would be certain overhead and administrative expenses. The pickup and delivery charges would be separate. When Triple A picks up automobiles presently, the charge for such service is based on $4 per hour, plus the cost of transportation for the driver from and to the office. Auto Trip lists the underlying rail freight charges for transporting carloads of used automobiles on trilevel cars. For example, the charge on a carload from New York City to Tampa, Fla., is shown as $1,135; New York City to Miami, Fla., $1,200; New York City to Chicago, $864; Chicago, Ill., to Dallas, Tex., $777; San Francisco, Calif., to Kearny-Little Ferry, N. J., $2,883; and from New York City to Los Angeles or San Francisco $2,735. Auto Trip would hold out to the public that automobiles dispatched from New York City by rail would reach Miami in 7 days. The shipper using the freight forwarding operation would pay a single charge for the service performed. Auto Trip lists the tariff authorities covering such movements. Auto Trip's vice president has discussed the availability of multilevel cars with representatives of certain railroads, including the Seaboard Coast Line, and has been assured that multilevel rail cars are available. Other railroads contacted were Penn Central Transportation Company, Chesapeake and Ohio Railway and Santa Fe Railroad.

Triple A, in providing driveaway service presently, from New York City to Tampa, charges $99 for the over-the-road haul by casual drivers; and the rate from New York City to a California destination is $150. The use of line-haul multilevel rail car service, however, will result in higher overall charges to the shipper of each automobile. It is estimated for example, that the freight forwarding charge would be about $180 on an automobile moved from New York City to Hollywood, Fla., depending somewhat on the motor car involved. This charge would include the transportation involved to the assembly origin point and from the distribution point to final destination. Auto Trip's vice president believes there is enough traffic of the type involved between New York City and Miami to justify the described freight forwarding service. It would use rail in moving automobiles to and from other points, whenever the volume justified such transportation. Normally, it would hold the automobiles at the assembly point until it accumulated enough for a carload.

Auto Trip was formed in 1968. Its balance sheet as of July 31, 1969 lists assets of $11,100, most of which was cash. On the liability side, capital stock of $10 is listed along with the capital surplus of $11,090.

SHIPPER EVIDENCE

Alexander's Rent-A-Car, hereinafter called Alexander or shipper, is engaged in renting of automobiles on a daily, weekly, and monthly basis. At time of hearing it had a fleet of about 3,500 automobiles, and operated branch offices at 14 locations in and near New York City, 3 locations in and near Philadelphia, Pa., and 2 locations in and near Boston, Mass. Alexander leases automobiles from Ford Motor Company, General Motors Corporation, and Chrysler Corporation. Normally, the automobiles obtained from these manufacturers are used by Alexander for about 6 months. At the end of the 6 months, Alexander endeavors to have all the cars it leases returned to New York City, including those located at Boston, Philadelphia and the other branch offices, so that they can be moved to certain points or depots nearby designated by the manufacturers as receiving locations. In some instances, when a leased automobile is in a distant State when the 6-month leasing agreement on a particular car is near expiration, Alexander may request permission from the manufacturer to move such automobile to the nearest depot instead of returning it to New York City; and the nearest depot might be Detroit, Mich., or Los Angeles, Calif. A leased automobile, at the end of the leasing period, might be anywhere in the United States.

During the usual 6-month leasing period some of the automobiles break down in transit at various points beyond New York while being operated by and under rental to Alexander's customers. If the repairs involved are of the type still under the car-maker's warranty the manufacturer will pay for the work. On these occasions, Alexander arranges for transportation of the repaired automobiles back to New York City, because its customers usually do not desire to wait until the automobiles they rent are repaired. If the car involved is located at a point not too far from New York City, Alexander in some instances uses its own employees to drive the vehicle back. If it is located at a more distant point, it normally has used common carrier driveaway service. Some of the automobiles under rental are involved in collisions at various points in the United States. If the damage to an automobile is not so great as to exclude restoration, Alexander arranges for its return to New York City after the necessary repairs are made. Occasionally, an automobile is so badly wrecked that Alexander arranges to sell it in the vicinity of the collision rather than have it repaired. Return service to New York City is required also when some of Alexander's leased cars are stolen, or when the lessee is arrested. Some of the automobiles are returned to Alexander's other branches outside New York City.

Alexander supports both applications. It points to the fact that on some occasions it would be advantageous to have used automobiles carried back to New York City rather than driven back. On breakdowns, mechanical failures or collisions, it would like to have alternate rail or truckaway service available for the long hauls. An automobile involved in a breakdown or collision could be repaired partially in a local garage near the point of breakdown or collision so that the car could be driven to a railhead assembly location and loaded on a rail car destined to a point in or near New York City, Boston, and Philadelphia. At time of hearing Alexander had 10 to 15 automobiles in repair shops at various points in the United States. Some of the automobiles rented by Alexander are expensive models on which it charges a daily rental of $16, plus 16 cents per mile. One-half to three-quarters percent of the fleet of cars is leased on a daily rental basis. The collisions, on a weekly basis, outside New York City, Boston, and Philadelphia, can range from 3 to 10. Most of the breakdowns involved occur in the States of New York, New Jersey, Massachusetts, and Pennsylvania; and the returns from these States usually are handled by Alexander's own employees in driveaway. On the long hauls, however, Alexander apparently believes that it would be safer to return a car by using rail as proposed rather than have it driven all the way back, and on some occasions would prefer to use such service even though the transportation would be more costly. In some instances Alexander believes it is unwise to use driveaway service on cars that have been repaired. It is aware that use of rail to return a car might involve driving it several hundred miles to reach a railhead assembly point. It also would like to have the described freight forwarding service available on those occasions when it might decide to ship a car back by motor common carrier truckaway service. It has used truckaway on at least one occasion from New York to Boston when the Boston office needed a considerable number of additional automobiles in a hurry. It has never required any truckaway service from points in the Southeast to New York or any other destination, and it never had a need in the past for a volume movement of used automobiles from the Southeast. It has required the movement of some cars in volume from New York to Philadelphia. If Alexander did have shipments from the Southeast, on a one-car basis to an assembly point, it would prefer that Auto Trip and Triple A provide the service so that it would not have to deal with multiple parties. If Alexander found that rail carriage would take too long to return an automobile from a certain origin, it would request that Triple A be used for the long haul in driveaway service. None of the automobiles have been shipped by Alexander on a Government bill of lading.

Alexander has used Triple A to return automobiles by driveaway to New York City, and it describes such service as reliable and very good. On one occasion Triple A returned a car from a point in Louisiana, and the driveaway service to New York City was performed in about 2 days. It, however, had not used truckaway for any return service to New York City. If the freight forwarder application is granted, Alexander will use the service proposed therein, and it would like to continue using Triple A and have it make pickups or deliveries in connection with the freight forwarder service. There is evidence that Alexander's business has been expanding, particularly during the summer season of each year. In the summer of 1969, it had about 500 more cars in its fleet than it did in the summer of 1968. Alexander has not used Motor Convoy, Auto Driveaway, or Insured Transporters for any service.

The general manager for Fred Waring's Pennsylvanians, Inc., a musical organization, has used Triple A for a number of years to move certain automobiles which were owned by Fred Waring, who resides in Stroudsburg, Pa. Waring maintains a winter home in Palm Springs, Calif., and his cars have been moved by Triple A between Stroudsburg or New York City, on the one hand, and, on the other, Palm Springs. Waring owns two automobiles. Usually, in the fall, he ships one automobile, with personal property therein, to California, and this is returned to Stroudsburg or New York City in the spring. On some occasions both cars have been shipped. Waring prefers that his cars not be driven by persons outside his family, and his general manager has consulted Triple A several times in the past with respect to obtaining transportation of the automobiles involved by some means that would eliminate the long-haul driving between California and the east coast.

Triple A has transported Waring's automobiles from California to New York City in about 10 days, and on at least one occasion the transportation was performed in about 12 days. Triple A's service has been satisfactory on those occasions when driveaway service was requested. If Auto Trip obtains the freight forwarder authority sought herein, Waring's general manager would use such service. He expects that use of such service would involve line-haul rail movements between New York City and Los Angeles, and he would like to have Triple A perform any pickup and delivery in connection therewith. Use of the freight forwarder service involving rail transportation between the east coast and California would depend somewhat on transit time. Waring would not want to wait 6 weeks, for example, if the freight forwarder service, in conjunction with rail, required that much time to move a car from California to New York City. On service from California to east coast, Waring's general manager usually has allowed 2 weeks for the driveaway service. Before using freight forwarder service involving rail transportation, Waring would be informed that shipping in this manner would require that his car be consolidated with other automobiles.

Waring's general manager indicates that two automobiles are used by employees for business trips in connection with concerts given at various points in the United States. Among other points, these business automobiles have been transported in driveaway service from San Francisco to Salt Lake City, Utah; Dallas, Tex., to New York City, and from Minneapolis, Minn., to New York City. On transportation involving the business cars time is an important element and for this reason fast service is required.

Waring's general manager has never sought freight forwarder service in connection with transportation of the above-described automobiles. Also, he has not made any inquiries of any railroads regarding such transportation, and he was not aware that certain motor common carriers provide truckaway service. He never has used any driveaway service from or to points in the Southeast, and is principally interested in having Auto Trip's freight forwarder service available between New York City and points west of the Mississippi River. Waring's general manager has never used Auto Driveaway's service and has not used Insured Transporters in recent years.

Olin of N. Y., Inc., hereinafter called Olin, rents automobiles. Its principal office is located in New York City, and it operates a branch in or near Carl Place, Nassau County, N. Y. There are about 2,000 automobiles in its daily rental fleet and about 1,000 that are leased on a long-term basis. Some of the rented and leased automobiles are driven by Olin's customers to various points in the United States. Occasionally, the rented and leased automobiles fail to function properly are abandoned, or are stolen, and Olin then arranges to have these cars returned to New York City. Triple A has been used by Olin to return cars from various points in the United States to New York City, and such service has been satisfactory. Recent return service by Triple A has included driveaway transportation from Raleigh, N. C., of a car that had been stolen in South Carolina from one of Olin's customers; from Florida, involving a car that broke down and was repaired locally in Florida; and one from Nevada. In the situations when Olin's leased or rented automobiles broke down, the customers in some instances will not wait until the repairs are made, and it is then Olin's responsibility to have the automobiles returned. It is possible that a breakdown might occur while one of Olin's cars is being used in California, and the customer would leave the car in that State and proceed to Chicago, for example. In that situation, after repairs are made, Olin might then have the car moved from California to Chicago for further use by its customer.

The rate of returns averages presently from two to five automobiles per month. Olin's total fleet has been increasing by about 450 cars a year. Some of the automobiles, as indicated, have to be returned very long distances, up to or over 2,000 miles. Olin is interested in the proposed freight forwarder application because such service would offer a method of transporting automobiles without the usual wear and tear on the vehicles involved in long driveaway operations. It is aware that the freight forwarder service with the rail haul will cost more, and such increase would not hinder Olin from using it. If, however, the freight forwarder service required excessive time in transit, Olin might not use it. On a recent return of a car from Florida, the evidence indicates that Triple A, after it was requested to perform service, moved the automobile to New York City in less than a week. Apparently Olin does not expect to obtain such prompt transit time by using the proposed freight forwarder service in conjunction with rail transportation. If the freight forwarder service involved required in excess of 3 weeks to perform the necessary transportation, Olin might not use it. None of the returned cars are moved to automobile dealers. Olin has never sought to obtain transportation of its automobiles by a freight forwarder and has not endeavored to obtain truckaway or rail service to move its automobiles. It has never requested Auto Driveaway or Insured Transporters to perform any service.

E. R. Squibb & Sons, Inc., hereinafter called Squibb, manufactures pharmaceuticals at certain points in New Jersey and has established regional sales offices or distribution centers at various points, including Boston, Mass., Atlanta, Ga., Houston, Tex., Kansas City, Mo., Chicago, Ill., Seattle, Wash., Los Angeles, Calif., Cincinnati, Ohio, Omaha, Nebr., and New York City. Squibb employs about 1,000 persons in its sales force. From time to time persons in the sales force are relocated or reassigned, and Squibb arranges for moving the household goods and personal property of the employees involved, including their automobiles. Some employees have second cars in their families. In some instances, when an employee of Squibb has been moved a considerable distance, he does not want to return to the location of his former employment to drive his car to the new residence. Squibb pays the expenses involved, and arranges to move about 100 employees annually. It arranges to have about 25 cars moved each year.

Squibb has used the household goods carriers in the past to move the used automobiles involved, and in July 1969 it began using Triple A to some extent. It is not entirely satisfied with the service performed by the household goods carriers with respect to used automobiles. On some occasions the household goods carrier selected for service would not move the automobile involved. On other occasions, the household goods carrier used by Squibb would move the automobile involved to a railhead, and shipper would then have to make further arrangements from that point. On one occasion Squibb engaged a household goods carrier to move an employee's car from Miami, Fla., to Minneapolis, Minn., and from Minneapolis to Cincinnati, Ohio. On some occasions when Squibb employees' cars have been placed in moving vans, damage has occurred to certain automobiles. There is some evidence that it would cost Squibb about $600 to transport a car from California to New York City in a household goods moving van. The freight forwarder service proposed by Auto Trip appeals to Squibb because shipper would, in effect, deal only with one organization in obtaining transportation of employee's automobiles. The evidence indicates no carrier or forwarder has offered Squibb the type of service proposed herein. It will use the proposed freight forwarder service if authority therefor is granted, and the evidence indicates that Squibb would use such freight forwarder service in conjunction with truckaway service as well as in combination with rail.

Squibb desires to continue to have Triple A service available, and professes a need for the freight forwarder service so that the employees involved in the above described relocation and reassignments can either have their cars driven to the new locations, if they so request, or have the use of rail or truckaway service when they prefer such transportation to avoid the wear and tear involved in driving their cars on the long hauls. Some employees simply do not want anyone to drive their cars long distances. Squibb is aware that use of the described freight forwarder service in conjunction with rail or truckaway will cost more. It cannot anticipate in advance what points in the United States might be involved in a personnel shift. For example, the Seattle distribution center has about 60 salesmen that travel from that point eastward into various parts of the Northwest and southward into Oregon, and these salesmen live at certain points throughout the territory in which they travel.

Normally, when a shift is made, and Squibb arranges for transportation of used automobiles, the employees involved want their cars at the new location as soon as possible. However, as indicated, some have second cars. Additionally, Squibb has a liberal policy with respect to the shifted employees renting automobiles at the new location until their own car arrives. On some occasions short distances are involved, when Squibb moves salesmen from Florida to Atlanta, and the cars are driven by the employees.

Squibb's representative had not personally determined what service is available currently from the railroads, existing freight forwarders, or from the motor common truckaway carriers, with respect to transportation of used automobiles. It had not checked beyond Triple A to find out what authorized driveaway service is available. Squibb's representative was not aware of Motor Convoy's service, and apparently he would not hesitate to use such transportation in the event Squibb had need for that protestant's service within the scope of its authority. He was not aware that driveaway service, under the proposed freight forwarder operation, might involve movement of an automobile over the road several hundred miles. He has never used Auto Driveaway or Insured Transporters, and was not aware that Insured Transporters can provide both driveaway and truckaway service in certain territory.

A Brooklyn, N. Y., resident employed as a sales manager, travels by airplane to Florida occasionally on vacation, and is considering visiting Miami or Miami Beach in the latter part of November or early December 1969. He expects to stay in Florida about 3 weeks. Before going to Florida he plans to trade in his present automobile for a new one, and he would like to have the newly acquired automobile available for use in Florida about a week after he has arrived there. He does not like to have persons outside his family drive his car long distances, and is interested in proposed freight forwarding service whereby Triple A would pick up his car and drive it to a railhead near New York City, from which point rail service would be used to a location near Miami. He has no objection to having his car driven short distances in pickup and delivery service in conjunction with the long-haul rail transportation. He does want his car transported in a moving van.

This witness was on vacation in Florida about 5 years ago, but did not have his car moved to Florida because he did not want it driven over the road such a long distance. In July 1969, he inquired of Triple A whether there was some transportation service available other than driveaway for moving his car to Florida. On the visit about 5 years ago he rented a car in Florida for about 10 days. He prefers, however, to have his own automobile available, if possible. He believes he can afford to use AutoTrip's proposed freight forwarder service in conjunction with long-haul rail transportation and would like to have the option of using it. He is not aware of any carrier or freight forwarder which would provide service similar to that which Auto Trip and Triple A propose herein. Witness would like to use his car in New York City as long as possible prior to his departure for Florida and have it available in Florida as long as he can before it is shipped back to New York City; and, of course, prefers to have it moved on the return trip expediously so that he will have the car to use in his occupation.

Although he has not inquired what the proposed freight forwarder service, in conjunction with rail transportation, will cost, this is a matter he will consider before using such service. He is aware that Triple A charges about $99 to move a car from New York City to Florida in driveaway service, and expects the service involving use of rail transportation will be higher. If the cost one way, to or from Florida, is $100 more than the all-driveaway charge, witness would possibly consider leasing a car in Florida. In using Auto Trip's proposed freight forwarder service, witness indicates a willingness under normal conditions to pick up his car at the railhead in or near Miami if the distribution point is close to where he is staying and can be reached conveniently. On the other hand, he might prefer to avoid performing such pickup service. He indicated that he might travel to California in the future for a 3-week visit, and that he would consider using the proposed freight forwarder service in conjunction with rail transportation. At the hearing, however, he was not aware that such service would involve consolidating his car with a number of other automobiles for shipment by rail. In using the above-described service, witness would expect to load in his car certain personal effects, including used sporting equipment.

The president of a corporation in Wayne, N. J., Passaic County, testified in support of the application. His wife travels by airplane to Miami Beach, Fla., each winter to visit her grandmother for extended periods of time. Witness owns two cars, and he supports the service proposed herein by Auto Trip and Triple A because it would be convenient in the future to ship one of the automobiles to Florida in the winter by use of the freight forwarder service in conjunction with the described rail transportation. He has made inquiries in recent years of Triple A regarding the availability of a service that would eliminate the driveaway service over long distances. He does not object, however, to short-haul driveaway of the type involved in local transportation to or from railheads.

On one occasion this witness traveled to California for a long stay during his employment in that State. Prior to leaving on that trip he was unsuccessful in an attempt to obtain any used automobile transportation other than driveaway service. He would not drive one of his own cars to California, and eventually rented a car for a period of 4 months. His wife plans to visit Florida again this winter and he would like to be able to arrange for service of the type proposed herein, including transportation of any baggage and personal belongings that would be shipped in the car. He is aware that service in conjunction with rail transportation will be more expensive than driveaway transportation. He prefers, however, to use the proposed service. This preference is based somewhat on the fact that his wife suffered a knee injury which has resulted in some physical impairment, and she prefers to confine her driving to automobiles which she has become used to operating. As to time in transit, witness expects that the car that would be involved could be moved by Auto Trip and Triple A from Wayne to Miami in about 10 days, and that the return transportation would be performed in about the same length of time. He has no objection to Auto Trip selecting an authorized truckaway carrier to provide the long-haul service. The witness, prior to the hearing, was not aware of Auto Driveaway's service, and he did not know to what extent that carrier and Insured Transporters can provide transportation of used automobiles. Apparently he had not made any inquiries of any authorized truckaway carriers.

A sales manager in New York City engaged in selling women's coats and suits occasionally attends business shows at certain points in the United States, principally those held in Detroit, Mich., Akron, Cleveland, Cincinnati, Dayton, and Toledo, Ohio, Chicago, and Miami or Miami Beach. On these trips he usually travels by air and it is essential that he take along certain samples and business records. In some instances, at Chicago, Cleveland, and Detroit, he has rented automobiles for local travel in and near these cities to visit customers. He prefers, however, on some of these trips to have his own automobile available. On at least one occasion in the past he consulted Triple A with respect to transporting his automobile, but lost interest when informed that his car would be driven over the road. He is interested in the freight forwarder service proposed, with the long hauls being performed by rail or truckaway, and in the Triple A service that would be provided locally to and from the assembly or distribution points. Of particular interest, in conjunction with such proposed service, is the convenience of having his own automobile and at the same time of being able to store his business records and samples in the car. Of course, there is the wear and tear avoidance factor that has been mentioned herein previously, and witness is insistent that his car not be driven over long distances.

Witness indicates that he would use the proposed service about twice a year, and that he is willing to pay the higher cost of such service. Each of the business or market shows involved normally last from 10 days to 2 weeks, and, occasionally a show might extend to 3 weeks. From New York City to Miami and the other points named above, witness expects that the time in transit on his car would be 6 to 8 days. If the service required transit time of 10 days to 2 weeks, his use of it would be more limited. As indicated, he has rented cars at certain points, but this is not entirely convenient because it is necessary for him to arrange for the transportation of his baggage and samples by air for the long hauls, and at origin and destination there is certain extra handling of the baggage and samples that witness can avoid if his own car is available.

A resident of Flushing, N. Y., rents an apartment in Miami Beach. He and his wife live in Miami Beach about 5 or 6 months, and return to Flushing in May of each year. Witness owns an expensive automobile, and he has used Triple A for about 5 years to move his car between Flushing and Miami Beach. In the past Triple A has picked up the car about 3 or 4 days before witness and his wife departed for Florida, and delivery of the car usually has been made about 2 days after they arrived in Miami Beach. When the car was returned to New York City in the spring of 1969, the driver used by Triple A had an accident involving about $1,500 in damage to the car. Although the witness was compensated for this damage and will still continue to use Triple A service, he supports the freight forwarder application because by use of such service he expects that his car would not be driven long distances over the road. He does not care whether the long-haul service is performed by rail or by truckaway. He believes, by use of such service, there would be less risk of damage to his car, and he is willing to pay the higher cost for such service. He has no objections to using such service if it requires from 8 to 10 days to move his car from Flushing to Miami Beach. He indicated he would not use such service if it required from 3 to 6 weeks to move his car from Flushing to Miami Beach. In the local pickup and delivery service involved, witness prefers that so-called professional drivers be used. Witness would pack some items of personal property in the trunk of his car, but no clothing.

A resident of Hartsdale, N.Y., in Westchester County, travels to Florida each winter. The duration of each visit to Florida in the past was about 2 months. In the future his annual winter visits are expected to be longer, about 5 months. He has two automobiles, and would like to have them available for use during the time he and his family are in Florida. On one visit to Florida, about 3 years ago, witness drove his car to Florida, and used Triple A driveaway service for return of the automobile to New York City. He also used Triple A once in 1968 to transport a car from New York City to Detroit. On some occasions he has rented automobiles while in Florida.

This witness supports Auto Trip's application and emphasizes a preference that any automobiles shipped by him be transported to Florida and return with as little driving as possible. He is aware that use of the freight forwarding service in conjunction with rail or truckaway transportation will cost more and is willing to pay the extra charge involved. He is aware also that the use of rail service by Auto Trip might result in transit time exceeding 6 to 8 days in moving an automobile from New York City to Miami, and that Auto Trip would accumulate and consolidate shipments of other cars with his in performing freight forwarding service. When he used Triple A in the past to move his car from Florida to New York City, there is evidence this required 10 days. If the freight forwarder service, in conjunction with rail, requires from 3 to 6 weeks to move his car from New York City to Florida, his interest in this method of transportation would diminish considerably.

When witness ships his automobile, he prefers to deal with one organization, which would provide the necessary pickup and delivery service as well as the line-haul transportation. Although his travel between New York City and Detroit is quite limited, he would like to have Auto Trip and Triple A available for service on such occasions; also he desires such service available for infrequent trips between Florida and Detroit where some members of his family reside.

Witness will use the freight forwarding service proposed and the related service of Triple A, if the applications are granted. He is willing to use any motor common carrier or freight forwarder that can transport or arrange for the transportation of used automobiles within the territory in which he might need the type of service he requires. When witness had a car moved from Florida to New York City and from New York City to Detroit, the automobile involved had no baggage or personal effects therein. He believes, however, that the availability of service for moving baggage and personal effects along with the automobiles is beneficial.

A resident of Brooklyn, N. Y., travels to Florida twice each year, usually in December and March. The duration of each visit to Florida approximates 2 weeks. In the past he has used Triple A on a number of occasions to transport his automobile or one that he has rented, between New York City and certain points in Florida in or near Miami, and such service was satisfactory. He also has used certain other motor carriers that provide driveaway service on automobiles between New York City and Florida. He has not used Auto Driveaway or Insured Transporters, and has never consulted any railroad or truckaway motor common carrier for service.

This witness is interested in using the freight forwarder service proposed by Auto Trip, and have the car he uses moved by rail or truckaway. He would use this type of service even though the cost would be more than the usual driveaway charge for line-haul transportation between New York City and points in and near Miami. In using such proposed service, witness would prefer that Triple A provide the pickup and delivery service involved because that carrier has performed satisfactory service in the past. If, for some reason, Triple A was not available to perform the necessary pickup and delivery service at the time his car originated at New York City or delivered in the Miami area, he has no objection to such local transportation being performed by some other motor carrier which is authorized to provide such service. If the line haul by rail required 2 or 3 weeks, witness would request Triple A to provide the necessary transportation by long-haul driveaway. If Auto Trip does not obtain the freight forwarder permit sought, witness would continue to use Triple A to move his car between New York and the described Florida area.

PROTESTANTS' EVIDENCE

Evidence in opposition was offered by Auto Driveaway, Automobile Transport, Boutell, Dealers Transit, Dependable, Insured Transporters, Motor Convoy, National Trucking, Nu-Car Carriers and Sober.

Protestants, collectively, maintain offices at numerous cities in the United States, including Chicago, Los Angeles, Miami, San Francisco, and New York City, and they establish new office locations from time to time. Some of the offices are operated by agents under agency agreements. Protestants advertise their services in newspapers and telephone directories, and, additionally, some seek traffic by using direct mailing lists. Their pertinent authorities are described in the appendix herein, and they hold out and perform service under such operating rights.

Auto Driveaway, in addition to the pertinent authority described in the appendix, has received a favorable decision in its pending application No. MC-125985 (Sub-No. 4). If that recent decision of July 9, 1969 becomes final, Auto Driveaway would obtain a certificate authorizing, as here pertinent, irregular route transportation of used passenger automobiles, in single driveaway, in secondary movements, between points in the United States (except Hawaii and the 16 States named in its certificate in No. MC-125985). Consequently, under the combined authority of its certificate No. MC-125985 and the authority set forth in the findings of the July 9th report in No. MC-125985 (Sub-No. 4), if certificated, Auto Driveaway could transport used automobiles between all points in the United States, except Hawaii, subject to the Government bill of lading and prior or subsequent rail restrictions specified in the appendix with respect to certificate No. MC-125085.

To show possible diversion of traffic, if the authority sought herein is granted, Auto Driveaway offered a list of about 1,150 shipments of cars it transported in driveaway in January and April 1969. The cars were originated at points in about 34 States and were destined to points in about 38 States and the District of Columbia; and, some were destined to a few points in Canada. A good share of Auto Driveaway's business involves transportation of cars consigned to automobile dealers, and this is the principal basis for this protestant's opposition to the Triple A motor carrier application. It, of course, holds no authority as a freight forwarder. It is concerned, however, that a grant of the freight forwarder application might result in some diversion of traffic from Auto Driveaway. A grant of freight forwarder authority would enable Auto Trip to offer the public an alternate type of service, and Auto Driveaway believes it would lose traffic by diversion because its service is more or less limited to one type of service. It believes any diversion would be greater in the big cities, such as Chicago, Detroit, Miami, and Los Angeles. In one instance, in November or December 1968, Auto Driveaway moved 24 automobiles from Chicago to Redding Calif., by long-haul driveaway when a delay was encountered in obtaining trilevel rail cars for these vehicles.

Boutell maintains terminals at various points. The list includes Detroit and Flint, Mich., Port Elizabeth and Ridgefield, N. J., Baltimore and Jessup, Md., and Framingham, Mass., where it conducts operations from or to railheads. It employs a large number of drivers, and operates a large fleet of truck-tractors and trailers. Its investment in truck-tractors and trailers approximates $7 1/2 million, and in buildings, land and furniture its investment is slightly in excess of $2 1/4 million.

In 1968, Boutell transported about 1/2 million automobiles. The majority of this traffic was received from General Motors, an automobile manufacturer. Boutell is experienced in performing truckaway service in secondary movements from railheads, and also has performed driveaway service in secondary movements therefrom with respect to new automobiles. Up to the time of hearing it had not transported any used automobiles in driveaway, in secondary service, from any railheads, but is willing to provide such service. Also, it had not transported any used automobiles in driveaway, in secondary movements, from or to any points on behalf of a freight forwarder. If Auto Trip obtains the authority sought, Boutell is willing to perform service for this applicant, providing the rates are satisfactory. Boutell occasionally receives requests from individual car owners in Michigan to move used automobiles from that State to certain points that protestant can serve. It usually can provide such service in truckaway by mixing such shipments with its outbound new-car traffic; and, can perform return service to Michigan in truckaway, in secondary movements, providing it has equipment in the area where the used cars are originated. It is a rare occasion when Boutell has transported any used automobiles for individuals, in truckaway, in secondary movements. Normally, it has not transported used cars for individuals in driveaway, in secondary movements, and it has no specific authority to transport baggage or personal effects which might be shipped with used automobiles.

Although Boutell indicates it can accumulate used automobiles and hold them at its terminals in order to make up truckloads, protestant has not, in the past, performed such service for individuals. Normally, Boutell operates its tractor-trailer units to destinations within about 450 miles of the Michigan origins it serves. There are occasions, however, when the automobile manufacturers and shippers in Michigan cannot obtain rail cars promptly, and Boutell is requested to transport automobiles to more remote destinations.

Boutell points to the fact that it withdrew its opposition to Triple A's Sub 1 application when the restrictions previously described herein were accepted. Boutell transports automobiles on Government bills of lading, moves cars to dealers, and transports ex-rail traffic. It, however, up to the time of hearing, had not transported any used cars with respect to ex-rail traffic. It is willing to provide such service within the scope of its operating rights. It can transport additional traffic.

Dependable's evidence, in addition to its present authority described in the appendix, consists of descriptions of certain operating rights applied for by this protestant in No. MC-125978 (Sub-No. 8) and FF-349. No. MC-125978 (Sub-No. 8) relates to proposed transportation, as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, with or without baggage and personal effects, in driveaway service, (1) between points in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, and (2) between points in Florida, (a) restricted to traffic having an immediately prior or subsequent movement in freight forwarder service, and (b) restricted against transportation of vehicles moving on Government bills of lading, and moving for, from, or on behalf of manufacturers of new automobiles except licensed vehicles transported for use of personnel of manufacturers.

No. FF-349, filed by Dependable Auto Shippers, Inc., a wholly owned subsidiary of Dependable, relates to proposed freight forwarder operations, by use of common carrier facilities of railroad, water, and motor vehicles, in the transportation of used passenger vehicles, with or without baggage and personal effects between Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, on the one hand, and, on the other, Florida, restricted against traffic moving on Government bills of lading and moving for, from, or on behalf of manufacturers of new automobiles, except licensed vehicles transported for use of personnel of manufacturers. Both of the applications were heard on a consolidated record. Reference to the Commission's files show that these applications were the subject of an examiner's report and recommended order (served September 5, 1969). The report of the examiner delineates findings which recommends grants of authority in each application substantially as sought.

Insured Transporters, in addition to office representation at about 60 points, maintains terminals at a number of locations, including Jacksonville, Fla., Portland, Oreg., Seattle, Wash., and San Leandro, Calif. This intervener offered an exhibit listing about 438 shipments of "motor vehicles" it transported in May, June, and July 1969, in driveaway, in secondary service. These shipments were originated at various points in about 38 States and were transported in single-line service to numerous points in the United States within the territory Insured Transporters is authorized to serve. Although intervener transports some shipments moving on Government bills of lading and those which have prior rail or water transportation, none of the shipments on the exhibit were shown to be traffic of that type. A considerable amount of the secondary driveaway shipments listed on the exhibit moved to automobile dealers. Also, intervener transports a considerable amount of shipments, in truckaway service, that have had prior movement by water carrier. It holds out to perform service for freight forwarders and other shippers within the scope of its authority. If Auto Trip obtains the authority it seeks herein, intervener is willing to provide service for applicant, including driveaway, in secondary movements, at either end of the line hauls involved. Insured Transporters believes that a grant of the authority sought by Triple A would result in diversion of a "great deal" of interveners traffic.

Motor Convoy maintains terminals at a number of points in the South and Southeast, and operates a large fleet of truck-tractors and trailers. A majority of the trailers are constructed with two decks and each of these can carry six or seven automobiles. It employs about 330 drivers, who are used principally to drive tractor-trailer equipment. Intervener performs service extensively in truckaway and driveaway on ex-rail shipments at railheads in or near Atlanta, Ga., Charlotte, and Winston-Salem, N. C., Columbia, S. C., Jacksonville, Miami, and Tampa, Fla., Savannah, Ga., Birmingham, Ala., Nashville, Tenn., and Jackson, Miss. Some of the automobiles received by Motor Convoy at these railheads for distribution originate at various points in Michigan, Kenosha, Wis., Lorain, Ohio, Louisville, Ky., Norfolk, Va., St. Louis, and Kansas City, Mo., and Mahwah and Metuchen, N. J. About 80 percent of the motor vehicle traffic transported by intervener is ex-rail.

In the first quarter of 1969, intervener transported 9,789 vehicles from Miami, and practically all of this was ex-rail traffic. In the same period, from Tampa, 900 vehicles were transported, but not all of this traffic was ex-rail; and from Jacksonville, 3,701 were transported, most of which consisted of ex-rail traffic. In the first quarter, within the scope of its operating rights, the overall number of vehicles moved by Motor Convoy totaled 124,894. Intervener points to the fact that, in addition to ex-rail, a "good" portion of its traffic consists of shipments moving on Government bills of lading and shipments destined to auto dealers. Consequently, in opposing Triple A's application it would like to have the Government bill of lading and dealer restrictions retained in any authority that might be granted. As indicated, it does not oppose the freight forwarder application. If the freight forwarder application is granted, Motor Convoy is ready, willing, and able to provide driveaway and truckaway service, within the scope of its authority, on used automobile traffic that Auto Trip would arrange. Intervener is aware that the authority described in the appendix, in subparagraph (a) relating to its certificate MC-3591 (Sub-No. 1), does not specifically authorize the transportation of baggage and personal effects with automobiles, but in subparagraph (b), in the appendix relating to certificate MC-3581 (Sub-No. 1), Motor Convoy has authority to transport "automobiles, automobile show equipment and paraphernalia," among other things.

National Trucking maintains terminals at Hapeville, Ga., and at Jacksonville, Miami, and Tampa. The Florida terminals are used in providing transportation of automobiles in truckaway and driveaway, in secondary movements, from railheads at or near the three cities named, and the Hapeville terminal is used in performing ex-rail service from Atlanta. National Trucking also performs some service from Orlando, Fla. It operates a large fleet of truck-tractors and trailers, and employs about 68 drivers. Some of the trailers are capable of transporting seven automobiles. National Trucking transports about 140,000 automobiles annually, and of this amount about 1,000 are used cars. Its tractor-trailer equipment, in distributing the cars, averages about 81 miles on each trip from the railhead to the destination. Some one-way trips, however, range from about 300 to 500 miles from the railhead.

National Trucking is principally interested in retaining the used car traffic it moves from the railheads, and believes some of this traffic might be diverted if Triple A obtains the authority sought. Some of the automobiles National Trucking transports move on Government bills of lading. If Auto Trip obtains the freight forwarder authority sought and arranges for transportation of used automobiles by rail to Florida and Georgia, National Trucking is willing to provide driveaway or truckaway service from the distribution points.

Nu-Car maintains terminals at Edison, Newark, and Mahwah, N. J., Boston, Mass., Earnest, Pa., Baltimore and Jessup, Md., and Norfolk, Va., and it operates a large fleet of truck-tractors and trailers for moving automobiles. Its headquarters is located at Bryn Mawr, Pa. It employs a large number of drivers for truckaway and driveaway service. A considerable percentage of Nu-Car's trailers are designed to haul at least six automobiles. The terminals at Newark, Earnest, and Jessup are used extensively by Nu-Car for participating in ex-rail traffic, and facilities are available at those terminals to consolidate or accumulate shipments of automobiles. It can deliver automobiles from these terminals or railheads within the scope of its authority by driveaway or truckaway, and it can pick up shipments and deliver them to these terminals or railheads. It also can provide, and is willing to perform, long-haul driveaway or truckaway service within the scope of its operating rights.

In 1968, Nu-Car transported about 681,433 automobiles. During the first 6 months of 1969, Nu-Car handled 5,643 automobiles through its Boston terminal and about 80 percent of these shipments involved new cars. It also transports used cars, including some traffic for a leasing company which it considers desirable because this has enabed protestant to use its equipment and driveaway personnel more efficiently.

As indicated in the appendix, Nu-Car does not have specific authority to transport any baggage or personal effects along with automobiles. It informs any prospective shippers of this, and in transporting used automobiles Nu-Car does not issue any bills of lading for any baggage or personal effects.

Nu-Car, performing driveaway service, has never used substituted rail transportation for any portion of a trip. It has, in some instances, for its own convenience, substituted truckaway for driveaway service. Nu-Car can combine a number of used automobiles for transportation by truckaway. In some instances, however, when a single used car is tendered, driveaway service is performed when there are no other cars to mix with it to make up a practical truckaway load.

Nu-Car protested Triple A's prior application in No. MC-125808 (Sub-No. 1) and withdrew its opposition at the hearing in that proceeding when certain amendments were made to include the restrictions that are now contained in the Sub-No. 1 certificate.

Sober maintains terminals at numerous points including Buffalo, N. Y., Linden, N. J., Bridgeport, Conn., Baltimore, Md., Cleveland, Ohio, Lansing, Mich., Chicago, Ill., Detroit, Mich., Kansas City, Kans., East St. Louis, Ill., and Los Angeles, Calif. It operates a large fleet of truck-tractors and trailers suitable for conducting automobile truckaway service. Its investment in truckaway equipment is slightly under 4 3/4 million dollars, and it is an approved and qualified carrier for handling shipments in bond through customs. It employs about 300 drivers for driveaway service, and approximately 240 to perform truckaway service. Sober uses only regular employees as drivers, and it pays wages and benefits established by industry collective bargaining.

Sober transports automobiles in secondary movements for many different types of shippers, including automobile manufacturers and dealers, Federal agencies, moving and storage companies, banks, finance and insurance companies, auto rental companies, business concerns that operate fleets of automobiles, private individuals, ocean forwarding companies, foreign auto distributors, and certain companies that specialize in auto body work. Since automobile manufacturers now use multilevel rail car service, Sober depends to a considerable extent on secondary movements in driveaway and truckaway, and it requires a certain volume of business to operate profitably and maintain its facilities. At time of hearing it was not operating to full capacity and is willing and able to transport additional shipments of automobiles in driveaway or truckaway in secondary movements.

Sober is not so much concerned with Triple A's application, if the authority sought is confined to the handling of automobiles in single driveaway service by casual drivers for casual shippers. It believes, however, that removal of the restriction against handling shipments having an immediately prior movement by rail would permit Triple A to offer its services to commercial shippers and provide added competition in view of the present and potential use of rail multilevel cars for transporting automobiles. It regards competition of casual driveaway companies as unfair and destructive as respects commercial shippers in the regular or recurring business of shipping automobiles, indicating that the casual driveaway companies are able to offer their service at cheaper rates. Because of the cheaper rates it believes that one group of commercial shippers would enjoy cheaper transportation charges than are required to be paid by others, if the casual driveaway companies are not limited to the individual casual shippers.

Sober opposes the freight forwarder application because a grant of such authority to Auto Trip, would place Triple A in the position of offering competing types and kinds of services in respect of the transportation of the same commodity in the same territory. It is apprehensive that a grant of such authority will permit Auto Trip and Triple A to divert some of the used automobile traffic protestant now enjoys in truckaway and driveaway, and that Sober will be handicapped in making consolidations of small shipments. Sober believes that it can assemble and consolidate such shipments better and more efficiently without the intervention of a freight forwarder, and that a grant of the freight forwarder application would not be consistent with the public interest and the national transportation policy. It has conducted profitable operations so far in 1969 and in 1968. Its operations in 1967 and 1966 were not profitable. Sober's certificates, pertinent herein, do not specifically authorize transportation of baggage and personal effects.

Automobile Transport maintains terminal facilities at a number of points, including Wayne, Mich., Baltimore, Buffalo and Boston. It operates a large fleet of truck-tractors and trailers suitable for transporting automobiles in truckaway service. It also provides driveaway service as indicated in the appendix. It employs a large number of drivers on a regular basis and a considerable number on a part-time basis. Dealers Transit performs driveaway service within the scope of its operating rights, but does not use casual drivers. Further testimony relating to Dealers and Automobile Transport was stipulated to the effect that if their witnesses, who were present at the hearing, were called to testify, such testimony would be similar to that offered by Boutell and Nu-Car.

EXAMINER'S APPENDIX

Pertinent irregular-route motor common carrier authority held by protestants which offered evidence in opposition

Auto Driveaway.– Certificate No. MC-125985 authorizes transportation of passenger automobiles, with the baggage, sporting equipment, and personal effects of the owners thereof, in secondary movements, in driveaway service, between points in 16 named States, on the one hand, including New York, Florida, Illinois, and California, and, on the other, points in the United States, excluding Hawaii. The certificated authority is restricted, among other things, against transporting (1) vehicles moving on United States Government bills of lading, and (2) traffic having a prior or subsequent movement by rail.

Boutell.–Certificate No. MC-3408 includes right to transport used automobiles, (1) in driveaway service, in secondary movements, between points in a number of States, the District of Columbia, Cleveland, Ohio, Erie, Pa., Buffalo, N. Y., the Chicago, Ill., commercial zone, and certain Michigan manufacturing and assembly points, (2) in driveaway or truckaway, in secondary movements, between points in a number of New England States, and (3) in truckaway service, in secondary movements, between points in a number of States, the District of Columbia, Cleveland, Erie, Buffalo, and certain points of manufacture and assembly in Michigan.

Dependable.–Certificates Nos. MC-125978 (Sub-No. 4) and (Sub-No. 5) authorize transportation of used passenger automobiles, with or without baggage and personal effects, in driveaway service, (1) between New York, New Jersey, Connecticut, and Pennsylvania, on the one hand, and, on the other points in the United States, except Alaska and Hawaii, and (2) between Florida, on the one hand, and, on the other, points in the United States, except Connecticut, Hawaii, New York, New Jersey, and Pennsylvania. These certificates are restricted, among other things, against transporting (a) vehicles moving on Government bills of lading, and (b) traffic having an immediately prior or subsequent movement by rail.

Insured Transporters.–Certificate No. MC-107227 includes right to transport automobiles, in driveaway, in secondary movements, between 13 States in the West, Northwest, Southwest, and West Coast. Certificate MC-107227 (Sub-No. 31) includes right to transport repossessed automobiles, in truckaway, between 11 of the States named in MC-107227, on the one hand, and, on the other, Washington, D. C., and 32 States, with certain point restrictions. Certificate MC-107227 (Sub-No. 36) includes right to transport (1) used automobiles, in truckaway and driveaway, in secondary movements, between a specified part of California, on the one hand, and, on the other, certain States in the Northwest, West, and Southwest, and (2) automobiles that have been abandoned, embezzled, repossessed, stolen and wrecked, in driveaway and towaway, between points in the United States.

Motor Convoy.—Certificate MC-3581 (Sub-No. 1) includes right to transport (a) automobiles, in driveaway and truckaway, in secondary movements, between Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, subject to certain restrictions on traffic moving from Guntersville, Ala., and Memphis, Tenn., and originating at Detroit and Toledo destined to the Carolinas, and (b) automobiles and paraphernalia between the same seven States named in (a) immediately above, with a restriction against transporting parts and accessories. Certificate MC-3581 (Sub-No. 4) authorizes transportation of automobiles, in driveaway and truckaway, in secondary movements, between a plant site near Hapeville, Ga., on the one hand, and, on the other, Texarkana, Tex. Certificate MC-3581 (Sub-No. 8) includes right to transport automobiles, in truckaway, in secondary movements, between North Carolina, Virginia, and West Virginia. Certificate MC-3581 (Sub-No. 12) includes right to transport automobiles, in truckaway, in secondary movements, between Mobile, Ala., and points in Louisiana, with a qualified no-tacking restriction. Certificate No. MC-3581 (Sub-No. 11) includes right to transport automobiles in secondary movements, from Nashville, Tenn., to Kentucky, Virginia, and West Virginia; and MC-3581 (Sub-No. 6) includes right to transport automobiles in driveaway and truckaway, in secondary movements, from a plant site at Hapeville, Ga., to points in Arkansas, Kentucky, and Missouri. The authority in Sub-Nos. 6 and 11 can be joined with that described in Sub-No. 1 to perform through service.

National Trucking.—Certificate No. MC-117206 includes right to transport automobiles, in truckaway or driveaway, in secondary or subsequent movements, between Jacksonville, Fla., and points in Florida and that part of Georgia on and south of U. S. Highway 78.

Nu-Car.—Certificate No. MC-22182 includes right to transport automobiles, in driveaway, in secondary movements, between certain New England States, New Jersey, and New York, (2) between Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia, (3) between Delaware, Ohio, Florida, North Carolina, South Carolina, Georgia, and Connecticut, and (4) between Virginia, Maryland, West Virginia, Pennsylvania, and the District of Columbia, on the one hand, and, on the other, New Jersey, New York, Delaware, Ohio, Florida, North Carolina, South Carolina, Georgia, and Connecticut. This certificate authorizes driveaway service between points in the States from Maine to Florida along the Atlantic Seaboard, including Vermont, Pennsylvania, West Virginia, and Ohio. Additionally, Nu-Car's certificate authorizes automobile truckaway, in secondary movments, between points in this same territory.

Sober.—Certificate No. MC-8989 includes right to transport used automobiles, in driveaway, in secondary movements, between points in the United States except Duluth, Minn. Additionally, the same certificate authorizes truckaway service, in secondary movements, between points in 27 States and the District of Columbia, covering generally, New England, the Middle Atlantic, and Midwestern parts of the United States, and the area near the Great Lakes.

Automobile Transport.– Certificate No. MC-87928 includes right to transport used automobiles, in truckaway and driveaway, between points in 10 States located generally in the Midwest, Southeast, and South, and a specified part of western Pennsylvania. Certificate No. MC-87928 (Sub-No. 40) includes right to transport used automobiles, in truckaway and driveaway, (1) between points in eight States and the District of Columbia, (2) between Delaware and Rhode Island, and (3) between Delaware and Rhode Island, on the one hand, and, on the other hand, the District of Columbia and the eight States referred to in (1) above, which includes New York, Pennsylvania, Virginia and five other States located in the East and New England. By using western Pennsylvania as a gateway area, Automobile Transport can tack the MC-87928 authority described above and the Sub-No. 40 authority to perform through service. Apparently Virginia could be used as a gateway area also since it is authorized to be served in both certificates.

Dealers Transit.– Certificate No. MC-4405 includes right to transport used automobiles, in driveaway, in subsequent or secondary movements, between points in the United States, except Alaska, Arizona, Hawaii, Nevada, Oregon, and Vermont, with an exception relating to traffic moving between plant sites or other facilities of a certain automobile manufacturer in the Chicago, Ill., commercial zone and five Midwest States.

SERVICE DATE
MAY 18, 1971

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1,
Acting as an Appellate Division, held at its office in
Washington, D. C., on the 4th day of May, 1971.

No. FF-359

AUTO TRIP USA, INC., FREIGHT FORWARDER APPLICATION
(New York, N. Y.)

No. MC-125808 (Sub-No. 2)

AAACON AUTO TRANSPORT, INC., EXTENSION - DRIVEAWAY FOR PRIOR RAIL MOVEMENTS
(New York, N. Y.)

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Joint petition of F. J. Boutell Driveaway Co., Inc., and Nu-Car Carriers, Inc., protestants, filed November 2, 1970, for reconsideration;

(2) Petition of Auto Driveaway Company, protestant, filed November 2, 1970, for reconsideration;

(3) Joint reply by applicants, filed November 16, 1970, to petition in (2) above; and

It appearing, That there is currently pending before the Commission, proceedings in No. MC-C-7287 and in No. MC-125808 (Sub-No. 5), involving the fitness of applicant in No. MC-125808 (Sub-No. 2), which development, considered conjunctively with the fact that both applicants are commonly controlled (and the additional factor here present that the proposed service in No. FF-359 is predicated substantially upon the operations proposed in the No. MC-125808 (Sub-No. 2) proceeding), renders inappropriate the issuance in either proceeding of any operating authority at this time; and good cause appearing therefor:

It is ordered, That the said petitions be, and they are hereby, denied, for the reason that the findings of Division 1, in its report and order of August 25, 1970, reported at 337 I.C.C. 570, notwithstanding the action taken in the next ordering paragraphs, are in accordance with the evidence and the applicable law.

It is further ordered, That on our own motion, the proceeding in No. MC-125808 (Sub-No. 2), be, and it is hereby, reopened for further consideration of the fitness of the applicant therein subsequent to final determination of No. MC-C-7287 and of No. MC-125808 (Sub-No. 5).

It is further ordered, That the proceeding in No. FF-359, be, and it is hereby, reopened for further hearing solely on the question of applicant's fitness as that question relates to the necessary finding of consistency with the public interest and the readiness, ability, and willingness properly to perform the proposed service, on a consolidated record with the proceedings in No. MC-125808 (Sub-No. 5) and No. MC-C-7287.

It is further ordered, That the Bureau of Enforcement be, and it is hereby, directed to participate as a party in the proceeding in No. FF-359.

By the Commission, Division 1, Acting as an Appellate Division.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX 460

Before The

INTERSTATE COMMERCE COMMISSION

DOCKET NO. MC 125808 SUB 1

AAACON AUTO TRANSPORT, INC.
NEW YORK, N. Y.

PETITION FOR A DECLARATORY ORDER

Comes now AAACON AUTO TRANSPORT, INC., hereinafter referred to as petitioner, and submits this petition for the issuance by the Interstate Commerce Commission of a Declaratory Order to interpret a restriction in its rtificate.

OPENING STATEMENT

Petitioner is a motor carrier holding a Certificate of Public Convenience and Necessity from the Interstate Commerce Commission, copy of which is attached hereto.

The restriction shown on sheet 2 of the Certificate restricts petitioner against the transportation of any traffic "moving to automobile dealers...."

Petitioner believes that in all instances its operations are conducted in conformity with the authority held in its Certificate. Petitioner has, however, experienced vast difficulty in numerous instances in interpreting its Certificate because, petitioner submits, such restriction is impossible of consistent interpretation, is vague, is indefinite and does not, under possible interpretation thereof, permit petitioner to offer a complete service to its shippers. Petitioner is averse to continuing to operate in a manner which may be subject to question by the Interstate Commerce Commission and which may lead to possible charges that petitioner is conducting operations in violation of its Certificate.

JURISDICTION

The Administrative Procedure Act, Title 5, U. S. Code Section 554 (e), provides:

> "The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to eliminate a controversy or remove uncertainty."

It is submitted that there exists an uncertainty which strikes at the heart of a substantial portion of the business of applicant.

Applicant has invested substantial sums of money to acquire facilities and personnel to provide a service as authorized in its Interstate Commerce Commission Certificate. It is now faced with the loss of a substantial portion of its business due to uncertainties concerning its authority.

The Interstate Commerce Commission's power to issue Declaratory Orders in proceedings of this nature is well established. 1 Davis Administrative Law Treatise, Section 4.10 (Supp. 1963). Independent of the power provided by the Administrative Procedure Act, the Interstate Commerce Commission is authorized to entertain petitions seeking interpretation of Certificates or Permits. Atlantic Freight Line, Inc. - Petition for Declaratory Order, 51 M.C.C. 175, 185; and Courier, Inc. Extention - Virginia Counties, 95 M.C.C. 612.

QUESTIONS

On numerous occasions petitioner has received requests from the public to move used passenger autos to business concerns (whether corporations, partnerships or individual proprietorships, or subsidiaries thereof), which engage in multiple business activities concerning automobiles (which include auto storage, auto repairs, auto leasing, auto renting, auto financing, auto manufacturing, auto modification and general auto servicing) and simultaneously engage (whether as a part thereof, a sudsidiary, a joint venture or otherwise) in the purchase into inventory for resale to the public of new or used autos (all said activities hereinafter collectively referred to as an "auto concern"). For example, the A Corporation operates a garage facility for storage of vehicles by the public; it also sells and installs mufflers and seat covers at the storage location; further it operates a car leasing company, a car rental company and a used car sales facility at that location.

Petitioner has been forced to make numerous hair-line decisions, relying upon the advice of counsel and the Bureau of Operations of the ICC, whether movements to different divisions of such auto concerns, under a multiplicity of circumstances, involve a violation in its restriction. It has found itself in the position of having to refuse to complete movements whose consignees constitute an auto concern as above described to the detriment of its own business and the needs of the public. In order to dispel the doubts surrounding the vague and indefinite words "automobile dealers" in its Certificate, petitioner propounds the following questions:

1. If a vehicle is transported to an auto concern as consignee to be stored at the consignor's request, later to be picked up by the consignor, and not purchased by the auto concern

as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

2. If a vehicle is transported to an auto concern as consignee to be repaired at the consignor's request, later to be picked up by the consignor, and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

3. If a vehicle is transported to an auto concern as consignee to be generally serviced at the consignor's request, later to be picked up by the consignor, and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

4. With regard to said auto concern as consignee of a car being returned to the leasing division thereof after a lease period has expired and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

5. If an automobile is being returned to the renting division of said auto concern as consignee after the rental thereof for a period of days, weeks or months, pursuant to a rental agreement, and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

6. If a car is sent to such an auto concern as consignee for the purpose of having the auto concern ship the automobile overseas, where said firm acts merely as a collection point for the automobile with no interest in the resale thereof and where there is no purchase of the car by the auto concern as part of its inventory for resale to the public in the ordinary course of business, is such a movement a violation of the restriction against traffic moving to automobile dealers?

7. Does traffic moving from one location of such an auto concern to another location as consignee constitute a violation of said restriction?

8. Does traffic moving from one division or agent of an auto concern to another division or agent of the same concern as consignee constitute a violation of said restriction? (See Report of Division 1, per Commissioner Goff, *AAACon Drivers Exchange, Inc., Common Carrier Application*, 102 M.C.C. 393 at page 396.

9. Does movement of a car owned by an officer, shareholder or employee of said auto concern to the individual as consignee and being transported for purposes and benefits of said person and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business but received at the premises of the auto concern, constitute a violation of the aforementioned restriction?

10. Does movement of a personal car owned by an officer, shareholder or employee of said auto concern to the auto concern as consignee, not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business and transported to the home of said officer, shareholder or employee, constitute a violation of the aforementioned restriction?

11. Does the movement of a vehicle to a consignee who has not purchased the vehicle but has received the vehicle solely as a result of the consignee's guaranty of a loan, as collateral for the loan, constitute a violation of the restriction in petitioner's Certificate?

12. Does movement of a vehicle already owned by said auto concern to said auto concern as consignee such as an "executive car" owned by the business and used in the furtherance of the business and not purchased by the auto concern as part of its inventory for resale to the public in the ordinary course of business, constitute a violation of the restriction?

13. Does movement of a vehicle to an auto concern as consignee for purposes which are excluded from the definition of "automobile dealer" according to the licensing laws of the state in which it operates and is incorporated, constitute a violation of the restriction in petitioner's Certificate?

14. Does movement of a vehicle to an auto concern as consignee where the carrier has no knowledge that the vehicle has been purchased by the consignee as part of its inventory for resale to the public in the ordinary course of business constitute a violation of the aforementioned restriction?

LAW AND ARGUMENT

Petitioner respectfully submits that only in circumstances in which traffic is moving to an auto concern which has purchased a vehicle as part of its inventory for resale to the public in the ordinary course of business, and acquired title thereto for such purpose is petitioner barred from engaging in such movement pursuant to the restriction in its Certificate.

The meaning which must be attributed to the restriction is that which was arrived at in Nelson, Inc., Investigation of Operations, 63 M.C.C. 407, as affirmed by the Supreme Court in Nelson, Inc., v. U.S. et al, 12 Federal Carriers Cases 81,178.

The restriction as to automobiles moving to dealers was only to impose a requirement that the carrier not transport automobiles which at the time of tender to the carrier are intended to become a part of the stock in trade, purchased by said automobile dealer into its inventory for resale to the public in the ordinary course of its business.

I. Definition of the Word "Dealer"

Nowhere in the case law or regulations of the Commission has the word "dealer" ever been defined. In view of the wide spread activities engaged in by persons otherwise involved with automobiles and the occasional nature of these activities it is submitted that any definition of the word "dealer" must be resolved around the function or the consignee involved, with respect to the vehicle actually being transported.

It is clear that when an automobile concern purchases a car from a third party into its inventory for resale to the public and takes title thereto in the usual course of its business, said automobile concern is acting as a dealer with respect to such transaction and petitioner may not be involved in moving such vehicles to such an automobile concern as a consignee.

Petitioner submits that upon the face of the entire record in its original proceedings, in view of the nature of those protestants who withdrew from the proceedings and in view of the well settled doctrine that all restrictions in certificates must be narrowly construed, the only reasonable interpretation possible of the word "dealer" is a functional one. What was sought to be prevented by the adoption of the restriction was that petitioner should enter into the business of moving automobiles which had been purchased by a consignee for resale to the public in the ordinary course of the business of such consignee. Petitioner has never engaged in such business, and does not intend in the forseeable future to engage in such business, without having previously applied for additional operating authority which it does not have at the present time. Petitioner respectfully submits, that this interpretation of its Certificate is the only permissible one and that all of the question propounded herein must be answered in the negative.

What is usually involved in petitioner's business is the tender to petitioner of an individual automobile to be picked up at a given point and then moved to a person or entity in the automobile business for the many and varied purposes of the individual shipper. Petitioner does not work for automobile wholesalers, automobile manufacturers, or used car dealers. It works solely and only for members of the public who require shipments, sometimes to people otherwise connected with automobile concerns but not in connection with the purchase by the concern of the vehicle being transported as part of its inventory for resale to the public in the ordinary course of business. Any reasonable interpretation of petitioner's restrictions should make clear that petitioner has the right to serve all members of the shipping public, and its restrictions should be interpreted as if it read that petitioner might not engage in the transportation of automobiles purchased into inventory for resale to the public in the ordinary course of the consignee's business where title passes to the consignee who is otherwise engaged in the business of buying and selling automobiles.

It is quite as clear that if this same consignee acts in another capacity, in which the auto it receives is not purchased by it for inventory to be resold to the public in the ordinary course of business, but is received for one of the innumerable purposes that cars are shipped to such persons (repairs, reshipment, end of lease, etc.) then petitioner may engage in said movement because it will not result in what petitioner's restriction was meant to prevent: shipment to an auto concern which has purchased the vehicle for resale to the public from inventory in the normal course of its business.

Petitioner submits that while no Commission definition of the word "dealer" exists, enlightenment may be found in other places.

A "dealer" is, according to Blacks Law Dictionary, Fourth Edition, 1951 at page 487 - "In the popular sense, one who buys to sell, - not one who buys to keep or makes to sell."

Moreover, in Alabama v. Hayes d/b/a Hayes Chevrolet 98 S. 2d 222, the Court had before it an attempt to tax a transaction in which an auto concern, which was at other times engaged as a buyer of autos into inventory for resale to the public in the ordinary course of business, took possession of a vehicle that had been pledged as collateral on a note held by the financial division of the taxpayer, after default on the note. The Court held that under these circumstances the taxpayer would not have to pay a tax as a "dealer" because he had not purchased the automobile for resale within the meaning of the tax statute. Whereas he was liable, in other circumstances, for tax as an auto "dealer" on the purchase for sale of motor vehicles, in the instant case he was not functioning as a "dealer", and therefore not liable for the tax. The Court stated:

> "...he was but a guarantor of the original note and that his reacquisition of the automobile in the manner outlined was only the result of his performance of a contractual obligation." p. 225

In Bates v. Simpson 239 P. 2d 749 (1962) the Court held that whether a person functioned as a dealer with regard to a particular transaction would determine liability in each individual case. Sanders and Simpson were two licensed car dealers who did business at the same used car lot. They shared rent, cars, telephone and furnishings, but were not partners and did not share profits and losses. In one particular transaction, Simpson sold a car with respect to which Sanders only perfomred financing services. Sanders made $70.00 from the financing but had no interest in the proceeds of the sale. Bates, the buyer, sued Simpson and Sanders together, alleging that they were both dealers. It was held that although Sanders was a licensed dealer for the purchase and sale of cars in general, he had not acted as one in the instant case, because he had simply performed financial functions ancillary to the actual sale. The Court recognized in this case that there was a difference between a person who actually functioned in a given transaction as a buyer or seller of automobiles to the public out of inventory, and one who might be a dealer in other circumstances, but who in the instant transaction was not acting as a dealer because he did not sell a car out of his inventory to the public in the ordinary course of business.

Moreover, Section 268 of the California Motor Vehicle Code specifically exempts from the definition of "dealer" those engaged in financial transactions such as:

> "Insurance companies, banks, finance companies, public officials or any other person coming into possession of a vehicle in the regular course of business who shall sell such vehicle under a contractual right or obligation..... provided such sale is for the purpose of saving the seller from loss....."

The word "dealer" is most often used and has been most often defined in the taxation of securities transactions. Whether or not a person is a "dealer" in securities and therefore subject to special taxation, has always been decided upon the basis of whether the party was functioning as a dealer with respect to the individual transaction in question. Thus, in Mirro-Dynamics Corp. v. United States, 373 F2d 14 (9th Cir. 1967), the court held that a taxpayer was not a securities "dealer" with regard to the transactions in question, because it did not purchase the stock in question into inventory for resale to the public in the ordinary course of business.

In view of the foregoing, petitioner respectfully submits that the restriction in its Certificate relates only to the shipment of a vehicle to a person who has purchased said vehicle as part of its inventory for purposes of resale to the public in the ordinary and usual course of its business, taking title thereto as part of such transaction.

II. The Original Meaning of the Restriction

In view of the patent ambiguity of the restriction as set forth above, petitioner respectfully calls to the Commission's attention the record and proceeding in which the petitioner first received its Certificate of Public Convenience and Necessity wherein, in order to remove the objections to the granting of such certificate by several transporters of new automobiles from plant sites and railheads, petitioner agreed to the restriction in question. It was not the intent of petitioner otherwise than with regard to the sort of transportation which would constitute competition for said objecting parties. In this regard, it must be noted that in 1966, petitioner was one of several applicants for similar authority and in the case of the other applicants the authority was granted with restrictions which more clearly define the limitation in terms of movement of vehicles from plant sites, etc. Thus, for example, Auto Driveaway Company MC 125985, in circumstances precisely similar to those of petitioner was restricted "...against the transportation of motor vehicles *for or on behalf* of manufacturers of trucks or automobiles or *from* the plant site of such manufacturers". Dependable Car Travel Service, MC 125987, another company precisely similar in nature to petitioner, whose hearings contained many of the same protestants and the same type of arrangement for the withdrawal thereof, is restricted against traffic "...moving for, *from or* on behalf of manufacturers of new automobiles and station wagons (except licensed vehicles transported for the *use of personnel* of manufacturers)".

While petitioner does not herein request modification of its Certificate to reflect this state of facts which apply to itself as well as its competitors whose certificates were drawn under the same circumstances as petitioner's, petitioner submits that these two certificates are useful in deliniating the proper interpretation of the language of its own certificate, i.e., cars purchased by automobile dealers as part of their inventory for resale to the public in the ordinary course of business.

In instances which a Certificate contains matters which are patently ambiguous, the Commission may consider matters not appearing on the face of the Certificate such as events antecedent or subsequent to the issuance of said Certificate. Morehouse - Investigation of Operations and Practices 81 M.C.C. 614 (1959); Fox Smythe Transportation - Oklahoma 106 M. C. C. 349; Obers Motor Lines et al v. U. S. 286 F. Supp 213 (D.C. N.C. 1968).

The record in petitioner's application proceeding clearly indicates that the Hearing Examiner and the parties to the proceeding contemplated that only vehicles purchased by the consignee for its inventory for purposes of resale to the public in the ordinary course of business of the consignee was contemplated by the restriction. The Hearing Examiner, over the objection of protestants, originally permitted supporting testimony by an automobile wholesaler who transported used automobiles to an auto concern which sold the used automobiles to retailers and to the public. However, in the Hearing Examiner's Report, the Hearing Examiner determined the admission of this testimony to be an error in light of the objection of protestants and in light of the proposed restriction in the Certificate of Public Convenience and Necessity against traffic moving to automobile dealers. The Commission, in its decision reversed the decision of the Hearing Examiner and permitted the testimony, holding that the consignee was not functioning as a "dealer as that phrase is commonly understood." See AAACon, supra, at page 396.

It is respectfully submitted that a review of the record to shed light on the meaning of the restriction indicates that the restriction was meant to limit the transportation of used automobiles to consignees who were functioning as dealers with regard to the vehicles being transported by purchasing said vehicle being transported for the purpose of placing it in inventory to resell to the public in the ordinary course of business.

In this regard, it should be noted that five carriers withdrew objections to the petitioner's original application for authority after the adoption by the parties of a restriction with the following language: "Restriction against transportation of the above described vehicles for or on behalf of manufacturers of automobiles and trucks, or to dealers of automobiles and trucks." This was the only restriction sought by these carriers. These carriers were: Dealers Transit, Inc., F. J. Boutell Driveaway Company, Inc., New Car Carriers, The Motor Convoy Inc. and Kenosha Auto Transport. This restriction was subsequently summarized by the Commission by the phrase "to automobile dealers."

From a review of the above and from the nature of the protestants, all of which are carriers primarily engaged in the bulk movements of automobiles for manufacturers from plant sites and railheads, that the original restriction was meant solely to protect this type of business, which applicant has never engaged in and does not intend to engage in.

Petitioner further questions the Commission as to whether petitioner has, and can discharge, a responsibility to determine the intent of the shipper in transporting the vehicle to a business concern, some division of which may sell automobiles. It is petitioner's contention that such duty is onerous, difficult and cannot be properly fulfilled in many cases, despite diligent efforts in the part of the petitioner. It is interesting to note that had petitioner's certificate been granted after October 1967, the restriction in question would not have appeared at all.

In October, 1967, the Commission in the land mark Fox-Smythe decision written by Commissioner Murphy set forth official Commission policy concerning any and all restrictions which the Commission might permit in operating authority pursuant to applications for Certificates of Public Convenience and Necessity by motor carriers. Approximately one year prior to this decision petitioner had sought and received the Interstate Commerce Commission a Certificate of Public Convenience and Necessity dealing with the transportation of used passenger automobile throughout the United States subject to a restriction among others against "...traffic moving to automobile dealers". As has been noted above, this restriction originally came about through petitioner's attempt to eliminate the interest of certain motor carriers primarily engaged in the business of moving new automobiles between automobile manufacturers and dealerships who purchased such automobiles into inventory and took title thereto for resale to the public in the ordinary course of business, and based upon the acceptance of a differently worded restriction, five carriers withdrew their protest with respect to said application.

In Fox-Smythe case precisely such a situation was discussed:

> "Even in those instances where an applicant makes restrictive amendments at the hearing or prior to the hearing so as to eliminate all or some of the protestants, the problem is not resolved. The Commission is not, and cannot be, bound by restrictions agreed to by the parties where they achieve results inconsistent with the public interest and inimical to practicable and effective regulation." (P.8)
>
> "Restrictions of motor operations frequently creates undesirable complications and should not be imposed except where it is shown conclusively that they are in the public interest and consistent with practicable effective transportation regulation...

> "In many cases where proposed restrictions have been limited or modified the reports or orders have used a catch all phrase 'administratively undesirable' standing alone or in conjunction with other reasons as justification for the change. While the phrase 'administratively undesirable' broadly depicts the ultimate reason for the elimination or modification in its broadest sense, there are at least three more specific reasons for most of the changes made: (1)that the proposed restriction serves no useful purpose; (2)that the proposed restriction is unclear or confusing; or (3)that the proposed limitation is unduly restrictive." (p.9-10)

The Commission went on to speak to the issue of restrictions that are unclear or confusing:

> "In refusing to impose restrictions in this category, the Commission has used such terms as 'vague', 'indefinite', or 'ambiguous' and has either modified or eliminated such restrictions because they were improperly framed or because their imposition would only lead to confusion in operating authorities." (p.11)
>
> "Frequently, origin and destination restrictions have been modified because such descriptions were indefinite, ambiguous, and difficult to interpret." (p.12-13)

The Commission then discussed restrictions that are unduly limiting:

> "For in determining whether to restrict or not to restrict, the effect of the restriction on the operations of both applicant and protestant as well as the transportation needs of the supporting shipper or shippers must be ascertained. Restrictions that are unduly limiting can be generally divided into two classes, namely; (a)those that prevent rendition of a needed or complete service, and (b)those that are impractical or difficult to enforce." (p.13)

> "An additional factor to determine under this heading is whether or not the proposed restriction serves only or primarily the purpose of limiting the efficiency of the operation." (p.15)

In discussing one aspect of this type of restriction the Commission spoke to the issue of plant site restrictions:

> "Because a plant site restriction does, however, limit the carrier's holding out of service rather stringently, it is often frowned upon by us and will not be imposed unless shown (or admitted) to be necessary in the circumstances of a particular case." (p.18)

In discussing restrictions that are impractical or difficult to police or enforce the Commission spoke about restrictions which required excessive knowledge on the part of the applicant:

> "These restrictions require applicant to have excessive knowledge concerning the nature of the commodities, their use, or their movement, which is difficult or virtually impossible to obtain." (p.19)

The massive appendix of the Fox-Smythe decision sets forth numerous instances in which restrictions in grants of authority have been refused or modified by the Commission for one or more of the reasons stated above. We respectfully point out the discussion concerning restrictions related to classes of consignor or consignee at page 52 and 53:

> "The following restrictions proposing to confine service to a class of shippers or to a specific type of consignor or consignee were modified or eliminated because the proposed restrictions were indefinite, ambiguous, and difficult to interpret.
>
> Limiting the destination area to be served

> 'to all present and future business locations' of two named consignees in Delaware was modified to authorize operations to all points in Delaware. No. MC-119950 (Sub-No.2) James P. Wood, Jr., Extention-Baltimore, Md. (not printed), decided May 20, 1965.
>
> Authority limiting service to and from 'Shop Rite Supermarkets' eliminated. No. MC-123408 (Sub-No. 11), Food Haulers, Inc., Extention-Three States (not printed), decided November 25, 1964.
>
> Restriction to traffic moving to 'wholesale and retail newsdealers and agents' eliminated. Exhibitors Film Delivery & Service Co., Extention, 67 M.C.C. 613.
>
> Restriction 'to traffic moving to authorized Watkins Products retail dealers' eliminated. No. MC-124914 (Sub-No.1), Sprecher Brothers Common Carrier Application (not printed), decided December 18, 1963.
>
> Limitation of service 'to shipments moving to retail gasoline service stations or to warehouses and other facilities for distribution to retail gasoline service stations' eliminated. No. MC-105461 (Sub No.62), Herr's Motor Express, Inc., Extention-Marcus Hook, Pa. (not printed), decided August 23, 1965.
>
> 'When moving to a store, restaurant, bar, institution, hotel, motel, church, bank, military installation, office or laboratory for installation' deleted. No. MC-126372, Milton M. Rabin Common Carrier Application (not printed) decided October 7, 1965.
>
> 'Consigned to or from newspapers, theaters, magazines, periodicals, and monthly publications' eliminated. No. MC-85621 (Sub No. 3), G. H. Vann Extention-Cut Flowers (not printed) decided March 31, 1965."

It is crystal clear from the language of the Fox-Smythe case as applied to the operations of the petitioner that had petitioner's original application for authority been decided after the date of the Fox-Smythe decision, the restriction under consideration would have been eliminated by the Commission as indefinite, ambiguous, and difficult to interpret. Many and varied are the situations in which petitioner has been unable to inform a member of the shipping public whether or not it was able to transport the shippers vehicle, simply because the destination address had some vague connection with a business which might have a division which sold automobiles.

Petitioner respectfully submits that where a vehicle is going to a consignee who has purchased the vehicle for the purpose of resale from the consignee's inventory in the ordinary course of business, and petitioner is or should reasonably be aware of such facts, only in such an instance can the petitioner be properly deemed to be on notice of a violation of the restriction in its Certificate, and that the said restriction be limited to the foregoing situation.

CONCLUSION AND REQUEST FOR FINDING

WHEREFORE, the Commission is respectfully requested to determine that, based on the petition herein, petitioner has authority to transport used passenger automobiles to auto concerns except where petitioner should reasonable be aware said concern has purchased the vehicle for the purpose of resale from its inventory in the ordinary course of its business.

Respectfully submitted,

MORTON E. KIEL
140 Cedar Street
New York, N.Y. 10006

DATED AT NEW YORK, NEW YORK,
THIS 18TH DAY OF JUNE, 1971.

Practitioner for:
AAACON AUTO TRANSPORT, INC.

APPENDIX 484

SERVICE DATE
MARCH 31, 1971

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-7287

AAACON AUTO TRANSPORT, INC. -- INVESTIGATION AND REVOCATION OF CERTIFICATE

PRESENT: Dale W. Hardin, Vice Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

It appearing, That on December 23, 1966, in Docket No. MC-125808 Sub-No. 1, a certificate of public convenience and necessity was issued by the Commission under Part II of the Interstate Commerce Act to AAACon Auto Transport, Inc., of New York, New York, authorizing operations in interstate or foreign commerce as a common carrier of used passenger automobiles, in driveaway service, in secondary movements, between points in the United States, including Alaska and excluding Hawaii, subject to certain conditions and limitations;

It further appearing, That there is reason to believe that said AAACon Auto Transport, Inc. has been and is performing operations not authorized by said certificate, including the transportation of repossessed, stolen or abandoned used passenger automobiles moving to automobile dealers, in driveaway service, in secondary movements, from points in various states including the States of Texas, Michigan, New York, Florida, West Virginia, Iowa, Oklahoma, South Carolina, Minnesota and Massachusetts, to points in New York, California and Florida, in violation of Section 206(a) of said Act and the terms, conditions, and limitations of said certificate, including specifically the condition restricting the authority granted therein against the transportation of any traffic moving to automobile dealers;

It further appearing, That there is reason to believe that said AAACon Auto Transport, Inc. has been and is engaging in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in interstate or foreign commerce, including, but not limited to, its treatment and handling of claims for damages or losses to property arising from such transportation, its issuance of, and practices in connection with, bills of lading which incorporate unreasonable provisions, and incorporate provisions which are at variance with those of the

Uniform Bill of Lading governing said transportation and with the holding out to the public by said carrier regarding the insurance coverage and bonding of drivers provided by said AAACon Auto Transport, Inc. for transportation performed, all in violation of Section 216(b) and Sections 219 and 20(11) of said Act; and good cause appearing therefor:

It is ordered, That an investigation on the Commission's own motion be, and it is hereby, instituted under the authority of Sections 204(c) and 212(a) of said Act, into and concerning the motor carrier operations and practices of said AAACon Auto Transport, Inc., with a view to determining whether said AAACon Auto Transport, Inc. has been and is performing operations not authorized by its certificate, in violation of Section 206(a) of said Act, and the terms, conditions, and limitations of said certificate, and whether said AAACon Auto Transport, Inc. has been and is engaging in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles in driveaway service, in violation of Section 216(b) and Sections 219 and 20(11) of said Act, and to issuing such orders and taking such other and further action as the facts and circumstances may appear to warrant;

It is further ordered, That AAACon Auto Transport, Inc., 247 West 42nd Street, New York, New York 10036, be, and it is hereby, made respondent in this proceeding, and that this proceeding be set for hearing at a time and place to be fixed;

It is further ordered, That in the event it is found that said respondent has willfully violated and is willfully violating said provisions of the Act, an order may be entered suspending for a stated period, in whole or in part, the certificate issued to said respondent, and if it is found that said respondent, whether willfully or otherwise, has violated and is violating said Act, an order may be entered requiring respondent to comply therewith and thereafter to maintain such compliance, and upon the willful failure of respondent to comply with such order, the certificate of said respondent may be suspended or revoked, in whole or in part;

It is further ordered, That the Bureau of Enforcement be directed to participate as a party in this proceeding;

And it is further ordered, That a copy of this order be served upon respondent, and that a copy be filed in Docket No. MC-125808 (Sub-No. 1).

Dated at Washington, D. C., this 18th day of March, A.D. 1971.

By the Commission, Vice Chairman Hardin.

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ROBERT L. OSWALD
Secretary

(SEAL)

a statutory criteria and the Commission in every decision involving freight forwarders has adopted and followed the statute.

Namely, they must make a finding that the applicant is ready, willing and able. If the Congress passing the law had determined that another key is necessary, it would have done what it did in the motor carrier section which is Part 2 and used the wording fit, willing and able. And I submit it is improper and that proceeding should be served.

So in conclusion I would ask the Examiner to also consider that we are facing one of the questions here which is with respect to a restriction in the certificate that deals with deliveries moving to dealers. And I point out in the Fox-Smith case the Commission has held itself that such a restriction using the word dealers is vague and indefinite and cannot be enforced.

And yet we are here in jeopardy because of that type of situation.

In conclusion, I would ask the Examiner, first, to hold that the question of whether the Commission has jurisdiction and any question with respect to claims be held in abeyance pending the determination of ex parte 263 which would apply to the applicant--respondent in this proceeding as it would in every--with respect to ever carrier in 263.

I can imagine the concernation if the Examiner would make one determination in this proceeding and find that the Commission takes a different position in 263.

Also, I ask that the Examiner sever the 7287 Sub 1 as being a matter unrelated to the investigation proceeding.

Also, that we be given due process with respect to the notice which we are entitled to as a matter of law.

Incconclusion, Mr. Examiner, I would further ask that you take notice of the fact that we, the applicant-respondent, is ready to sit down with the Bureau--we have attempted to do that this moring. And by stipulation accept all evidence, all proof of all of these people who are here, if they are here to testify in behalf of the Bureau, all the facts they might have that are true and to shorten the proceeding and not require these people to spend such time as may be necessary to take their testimony under direct examination and to be cross examined.

And we are still preapred to meet and attempt to resolve the issues in this proceeding and we ask the Examiner if he would lend his good office to that so that we may try again.

Exam. Reilly: Well, the Examiner is not going to mediate, he will sit and conduct the hearing. A matter of a stipulation is btween the parties and I do not intend to get that.

Now, with respect to the three areas which I gather Mr. Kiel has addressed himself to, one is jurisdiction as to claims, one is the severance of Sub No. 1 and the other is a due

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Exam. Reilly: I gather this is the title of the firm.

The Witness: Yes. For a complete check out, and it should be noted that on their bill, which I have attached here, that all mechanical parts needing adjustments were fixed and the notation appended to the bill, "Okay for extended trip.", written across the bill for $62.05.

Mr. Kiel: Mr. Examiner, I move to strike that. I don't know who made the statement, whether he is going to be called as a witness and we certainly can't receive evidence of some unknown person not here to testify with respect to the accuracy of some document that is not properly in evidence in this proceeding.

Mr. Browning: Mr. Examiner, I think we have enough in here that he took his car to a Volkswagon dealer and had it checked over.

Exam. Reilly: I'm going to overrule the objection.

Q All right, sir. What happened after that?

A Well, the day before the car was to be picked up we received a phone call from driver No. 1, Mr. William Hurd saying he would pick up the car the following day, August 10th. We gave the car a check out, noting everything was in order. On August 10th Mr. Hurd arrived with another document entitled the bill of lading.

This document requires the signatures of both the driver and the car owner as well as a joint check of the condition

(Bureau of Enforcement Exhibit No.5 Witness Browder, was marked for identification.)

Mr. Kiel: Mr. Examiner, this document which Mr. Browning introduced and which followed the discussion about the size of the print is in fact a document which the mechanical process used by Mr. Browning has reduced the size of the print.

Now, I think if we are going to be fair that the record sh should show that. And I don't know why you reduced the size but you did.

Mr. Browning: Mr. Examiner, I am not a magician. I put it into a Xerox machine, the only one available at our office.

Exam. Reilly: Let's stop straining it, Mr. Kiel and Mr. Browning. We don't have to go into it anymore. It's a bill of lading marked 8393, and that's it.

Q Now, that's the document that you signed, is that correct?

A Yes, sir.

Q Now, would you go from there and tell us what happened next, after you signed that document?

A The next day, on August 11th, our family started across the country missing a 3:00 p.m. phone call from Driver No. 1, Mr. Hurd. Having missed it, Mr. Hurd contacted Mrs. Nicholas Shrowder of Port Washington, New York, the expected receiver of the car and Mr Hurd claimed that the engine "threw a rod," on the desert and the car had to be towed to D & D Foreign Car Service of 2935 East 4th Street, in Reno, Nevada.

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Mr. Hurd left the car at this point. We were contacted in Chicago by Mr. Shrowder and told of the events--

Mr. Kiel: Mr. Examiner, I object. I don't mean to keep objecting but we are getting information by other people. We are not hearing whose information is being restated, who may or may not have made these statements and we are getting rehash of information.

And I submit for the purposes of this hearing and the purposes of the Commission this type of evidence should not be admissible.

Exam. Reilly: Is that a motion?

Mr. Kiel: A motion to strike.

Exam. Reilly: The motion is denied.

You were in Chicago?

The Witness: At any rate, we learned that our car had had some sort of difficulty and that it had been towed to D & D Foreign Car Service.

We were told further that we should contact Mr. Cristock in San Francisco before 2:00 p.m. Saturday, August 15th.

We placed a call to Mr. Cristock accordingly and were informed that Mr. Cristock cannot be reached by the answering service at that number.

We did succeed in contacting Mr. Cristock in San Francisco upon our arrival in Port Washington, New York, on August 18th.

Mr. Cristock informed us that as, quote,"A mechanical failure," unquote we would have the D & D Foreign Car Service

Mr. P. Zola: This is not a single party. I would respectfully like the courtesy of a copy, Mr. Examiner.

Exam. Reilly: If you have a copy, Mr. Browning, would you give it to him. If you don't have a copy, would you furnish one to him subsequently.

Mr. Browning: All right, sir. Let the record show that I have furnished Mr. Paul Zola and Ralph Zole a copy of those documents.

Q All right. What occurred after that, Mr. Browder?

A We noted on this second lading the driver was Mr. Frederick Bounoure of Hotel Pickwick Arms, East 51st Street, New York, New York. In order to check further on the date of Mr. Bounoure's arrival we called Mr. Cristock again. Mr. Cristock said we should expect the car to arrive on September 13th rather than on September 12th, stating he gave the driver an extra day because of Labor Day.

The car didn't arrive on September 13th. We contacted the Pickwick Arms to inquire about Mr. Bounoure. They informed us they had no knowledge of a Mr. Frederic Bounoure. He was neither registered nor expected by the hotel.

And learning that we became worried.

On September 14th we telephoned Mr. Bob Maxwell of the Claims Department of AAACon Auto Transport in New York City, 147 West 42nd Street to report that our car had not appeared.

Mr. Maxwell told us not to worry, the cars were often late.

On September 15th we received a call from Mr. Cristock in San Francisco. Mr. Cristock said that he had, quote,"Just received a letter of an accident. Your car was totalled in East Ely, Nevada, and the driver awaited until help arrived on the east coast to tell us." unquote.

East Ely we discovered is only a few hours from Reno and we guessed at that point that the accident probably occurred around September 4th. It took 11 days to be notified despite the fact the driver's instructions state he must file a report immediately and not abandon the car.

Mr. Cristock said, quote,"There was a rain storm and the driver drove off the shoulder, Then attempted to right himself and turned over, totalling the car. You will hear from our insurance company immediately." unquote.

We didn't hear from anybody.

On September 18th we called Bob Maxwell again at AAACon's claims department in New York. Mr. Maxwell was very busy.

He asked us to send a photocopy of our insurance policy. We asked him why this action was necessary and were told,"don't ask questions, just send it in." unquote.

We asked for a full written report of the accident. And while I was requesting this, Mr. Maxwell hung up the phone on me.

Well, we complied with Mr. Maxwell's request and we sent him a photocopy of our insurance policy attaching a note asking us and told me that some one would call us back later that day.

He refused to commit himself regarding our request for an official report of the accident and AAACon's intentions. Later that day Mr. Maxwell called back and promised that we would hear definitely by October 5th from their insurance company.

When asked the name of their insurance company he hung up in mid-sentence on me.

On October 6th we received a letter of October 3rd at our new home stating that we had, quote, thoroughly investigated the matter. It has been determined that the damage to your car was caused by operational failure and, furthermore, that there is no indication of negligence on thepart of the driver, unquote.

In brief, there was a decline of any responsibility.

Q Mr. Browder, would you identify this document as the one to which you just referred?

A Yes, sir.

Mr. Browning: I would like to have this marked for identification, Mr. Examiner.

Exam. Reilly: Letter on the letterhead of AAACon Auto Transport, Inc., dated October 3, 1970, addressed to Mr. Lesley H. Browder, Jr., and signed by Bob Maxwell, Claims Department, marked for identification Exhibit No. 9.

(Bureau of Enforcement Exhibit No. 9, Witness Browder, was marked for identification.)

Mr. Kiel: Mr. Examiner, rather than having me continuously object to this witness' testimony and subsequent witnesses with respect to hearsay, will you agree that I may have a continuing objection?

Exam. Reilly: You may have a continuing objection, and I think it is quite obvious, Mr. Kiel, that I don't feel that it is hearsay.

Q What happened to that, sir, after receipt on October 6th of this letter of October 3rd?

A At this point we felt rather frustrated and angered at AAACon for being dismissed so curtly and without anything but a letter and the loss of our car, plus the motor and other expenses. So we appealed to a local attorney, Mr. Herbert P. Giorgio, for help.

Mr. Giorgio wrote letters on Octber 9th, November 4th and November 16th inquiring about the accident and no reply was received to these letters.

Q Would you identify these, please, sir. Are those letters to which you just referred, October 9, November 4, and 16th of November?

A Yes, sir.

Mr. Browning: Mr. Examiner, I would like to have these marked for identification, if I may.

Exam. Reilly: All letters are addressed to AAACon Auto Transport, Inc., 147 West 42nd Street, New York, New York, and are signed by Herbert P. Giorgio.

The letter of October 9th, 1970 will be marked for identification Exhibit 10. The letter of November 4, 1970, will be marked for identification Exhibit 11, and the letter of November 16th, 1970 will be marked for identification as Exhibit 12.

(Bureau of Enforcement Exhibits Nos. 10, 11, & 12 , Witness Browder were marked for identification.)

Q All right, sir. Continue on.

What happened after that, please?

A Well, after having sent the letters at the same time we notified the New Jersey Division of Motor Vehicles with a report of what had happened. We traced the car to Birch Brothers Garage in East Ely, Nevada.

Q How did you trace that again, please, sir?

A Through the conversation we came to understand that the car was located at Birch Brothers Garage in East Ely, Nevada.

Q That's the conversation with whom now?

A This was between--the original conversation with John Cristock, when he called us and told us that the car had gone off the road, that the driver had trouble righting it and turned it over.

Q What happened after that once you traced it to that garage, sir?

Q Now, sir, do you have a copy of a written formal complaint--claim, rather, that you forwarded to AAACon indicating the damages that you suffered and asking them to pay the claim?

A I don't follow--we hope to get a report on what happened. We never received the report. We don't know what happened to this day beyond Mr. Cristock's explanation over the telephone of what your company did.

We asked for it repeatedly on telephones, in written correspondence and we have not gotten any more information that that brief piece of paper, one paragraph stating that you had investigated it, come to a full conclusion in two sentences and that was it.

Our car was gone, sir, and $350 some odd for a new motor, $110 paid to your company, and no car.

Q Mr. Browder, I sympathize with your predicament. And fact that your car was damaged. What I'm asking you, sir, is did you ever file a written claim with the carrier saying that my car was worth so many dollars and please pay me so many dollars?

A No, sir.

Q All right.

Now, sir, did you ever start legal action to collect the amounts due you?

A I believe we did by requesting you from you a statement of the report. It's not--we were after simple information and we never got it and the car was taken from us with nothing more than a paragraph worth of conversation to take a car.

Q When you consulted with your attorney, did he advise you that you should file a written claim with respect to the carrier with respect to this loss that you suffered?

A No.

Q Are you aware of your legal obligation to file a claim?

Mr. Browning: Objection?

A I--

Mr. Browning: That's irrelevant and Immaterial.

Exam. Reilly: The objection is sustained.

Q Sir, are you familiar with the fact that on theback of the uniform straight bill of lading there is a requirement that you must file a written claim before a carrier may pay you damages?

Mr. Browning: Objection. This is not the uniform bill of lading. This is irrelevant and immaterial.

Mr. Kiel: Mr. Examiner, the document in question refers to "all terms and conditions of the uniform straight bill of lading are included by reference and made a part hereof." And I'm only asking the witness--

Exam. Reilly: You are placing a burden on the witness far, far beyond the burden he should sustain and he is not going to be permitted to answer the question.

Mr. Kiel: Well, Mr. Examiner, I think it's a proper question and ask you to reconsider.

Exam. Reilly: Wait a minute. The document that is pertinent to this issue is the document which you gave him and called a bill of lading. You did not chose to rely on the uniform bill of lading.

Mr. Kiel: Mr. Examiner, may I read to you and for the record from this document which is Exhibit No. 5?

Exam. Reilly: No, you may not. It's already in evidemce and it speaks for itself.

Mr. Kiel: As I understand it then to sum up, with respect to this--

Q You filed no written claim and didnot institute any legal action to collect for the damages that you sustained?

A You are correct in that.

Q Why didn't you?

A I am a university professor, sir.

Q I understand that.

A Come on. You asked me a question. Let me give you an answer.

Exam. Reilly: Go ahead, Mr. Witness.

A It cost me--it cost me $2200 to buy a new car to get to work. It cost me $350 tc put a new motor in the old car that I lost. It cost me $110 to pay for services that were never fulfilled with promises that there were $3,000,000 worth of insurance, et cetera. I don't--I don't have the kind of money

Q (By Mr. Johnson) Correction. What year was that, sir?

A 1966.

Q '66.

Exam. Reilly: The witness may be excused.

Are there any objections to the exhibits?

You may leave the stand.

(Witness excused)

Mr. Kiel: Mr. Examiner, I would like the record to show that I object to the testimony of this witness being received or the exhibits and move that they be stricken and the witness' testimony be stricken for the reason that we did not receive sufficient notice with respect to this witness' participation. And I still don't understand what the purpose of this witness' testimony, what was unjust and unreasonable. No claim was filed. No action was begun which would permit us to compensate the man for his loss and I can't understand how in this world--perhaps a layman doesn't know it but he can consult with an attorney and representatives of the Bureau and not get notice to file a claim.

Exam. Reilly: We are not going to go into this why or shy someone doesn't want to file a law suit.

Mr. Kiel: I didn't say law suit, sir, just a claim.

Exam. Reilly: A claim. A law suit You know in any event you had a dissatisfied customer on your hands. Your objections are overruled and the exhibits 1 through 17 are reelapsed, that it was damaged. So we informed our insurance company of this fact and the insurance company sent an adjuster up to Lawrence, Kansas, from I believe their Kansas City Office and he had the car checked over and found out it was driveable and had it transported by AAACon onto Cleveland and we had the car repaired.

I then filed a claim with AAACon. The car was received on November 14th. It was shipped on--on August 23rd, 1970 and received November 14, 1970. I did not pay the driver the $50 because per their contract they stated that if you paid the driver you received the car in good condition. If you did not receive the car in good condition, not to pay the driver, which I did not do.

And I sent a letter with $50 to AAACon on November 17, 1970 and by the letter made a claim for my damages.

Q Which were how much, sir?

A Body damage to the car was $884.24.

My personal belongings were 222,92. I had some legal fees, long distance telephone calls and car rental for a total sum of $1783.11.

Q What response did you get from AAACon?

A None.

Q None.

A The routine claim form was sent to me. I filled it out and returned it to them.

Q What do you mean by routine claim form, sir?

A Mimeographed claim form was sent to me by AAACon which I filled out and returned to them.

Q Did you retain a copy of it?

A No, I did not. It was a single copy and I did not have access to a copying machine. to copy it.

Then on December 10th I received a letter from Mr. Maxwell awaiting an answer to their letter of December 8th. while I hadn't received it and I never did receive a letter of December 8. I wrote Mr. Maxwell on December 12th requesting a copy of the letter of December 8and also asking him to process my claim, And I called him up first.

I called him on December 10th. I phoned him, and then wrote him on the 12th requesting a copy. When I phoned him on the 10th I tape recorded the conversation and Mr.Maxwell didn't seem to know whom I was even, which would seem strange to me if he was sending up followups on letters that he didn't know who I was, but that's besides the point. I then subrogated the claim to my insurance company and they paid for the damages to the car less deductables and they reimbursed me for the personal goods stolen less the deductable amount called for in my insurance policy and I signed subrogation papers and my insurance company has negotiated since then.

The last time I talked to my insurance company they had gotten no place with their negotiations.

Q When was that?

A I talked to one of the adjustors, Oh, about a week ago and he did not know anything at that time. However, I'm not sayin that something wasn't going on but he didn't know of anything going on at that time.

Q And that's the last you heard of the matter, is that right?

A Yes, it is. December 15 I had written a rather nasty letter to Congressman Mitchell and to the ICC with a copy to Mr. Zola and Mr. Ralph Zola wrote me a letter stating that they had answered.

I never received the answers to any of these letters that he had answered. I seem to have everything else, handwritten notes and everything else, but I can't get copy--but I don't have the copies of any letters, these other letters that he refers to.

Q Did you receive those letters he refers to?

A No, sir, I don't know what they are.

Mr. Browning: Thank you, sir. That's all I have of this witness.

Exam. Reilly: By the way, before we proceed. The Examiner feels that an enforcement attorney is capable of representing the interests of the protestants in this proceeding.

The protestants may suggest questions to the enforcement attorney. But in order to operate under some kind of sense and order, I think that we'll confine the direct examination

Property of vehicles under--this bill of lading things said unless a greater value is declared thereon above, shipper agrees that declared value of all personal property in the vehicle is under $50 and hereby releases carrier from all obligations for loss or damage thereto in excess of $50.

Q And did you at any place indicate to the carrier that your personal property was in excess of $50 before the vehicle was transferred?

A No, because unfortunately I didn't happen to pick that up when I--my wife wigned this, if you will notice. I wasn't there when they picked the car up. So my wife gave them the $85 and signed the bill of lading.

Q As I understand your testimony, after the movement was interrupted in Kansas and after your insurance company adjuster found that the vehicle was driveable, AAACon transported and delivered it to you in Cleveland?

A Yes.

Q And it was repaired by you in Cleveland?

A In Cleveland, Right.

Q Is it your position that you believe AAACon to be responsible to you for legal fees and automobile rental and telephone calls?

A Yes, I do. Mainly because of the excessively long delay in even telling me where the car was or letting me go ahead and get the car moved down. I think it's a moral right.

mechanic got on the phone and he said the car obviously was raced well in excess of 100 miles an hour.

Mr. Kiel: If Your Honor please, I object. We have here absolutely no way of determining the truth or accuracy of such a statement.

The Witness: I have the address of that place.

Exam. Reilly: Just a moment.

This is information that came to the witness in the ordinary course of his business relating to this car by making a telephone call to the mechanic or the mechanic got on the line. I'm going to receive the evidence.

Go ahead, Mr. Witness.

A Okay.

As I said, I have the address of that Korvet enterprise. It's Korvet Enterprises Incorporated, 84 Page Street, San Francisco, California.

So he told me that the car was obviously driven in excess of 100 miles and hour. So the fellow got back--Terry Sprague got on the phone again and he said, listen, wire me the money, I will have the car fixed and I will drive it across because I have to get to New York. So he said he has to get to New York because he has to catch a flight to England where he has to Meet George Harrison of the Beetles and he is supposed to fly to England to pick him up and then to India for some meditation.

Q No. What kind of tires were they?

A They were Goodyear Blue Dot Sports Car Special tires. They were especially built--special tires for sports cars and $100 each.

Q With nice thick treads?

A Yes, sir.

Q Or were they--what we call racing tires without treads?

A Well, sir, if it was inspected in Los Angeles and found--

Q Just answer my question.

Did the tires have treads or didn't they have treads?

A Yes.

Q And were they the regular treads that you see on an automobile?

A Yes, sir, regular treads.

Q What was the make of these tires?

A Goodyear Blue Bot Sport Car Specials.

Q Were they designed as racing tires?

A No, sir, sports cars tires.

Q What was the clearance with these tires from the lowest part of the exhaust system?

A I have no idea.

Q Was it not more than four inches from the ground?

A I have no idea.

Q Didn't you receive a letter from representatives of the carrier dated January 12th, 1970, indicating that they couldn't transport the car because the tires were not safe for driving?

A Yes, sir, have the letter right here.

Q And they suggest you make arrangements to replace the tires and the wheels.

Q And the carrier indicated that they would be glad to turn the car over to somebody else to transport it for if you replaced the tires they would transport it for you?

A Yes, sir.

Q Sir, didn't you instruct your attorney, Mr. Campbell, to start a suit to collect damages from AAACon?

A Right.

Q Now, as I understand it, sir, you have repairs and storage of approximately $435, but isn't it a fact that your suit is for $1500 ?

A =Yes, sir.

Q And that's what you think you should collect for the $435--

A I personally think I should collect a lot more.

Q Do you have a bill from--the documents that you showed me were Korvet Enterprises. That's the company that did your repairs?

A Yes, sir.

Q And the man you spoke to there, was that a Mr. Bruce Bennett?

A I don't remember, sir.

Q So that with respect to the person who suppoposedly told you about how much the car had been driven, you don't know who that was?

A Evidently it's a Korvet dealership and I'm assuming they know what Korvet's are all about andhe told me the car was abused.

Q You don't know who it was that told you that?

A I don't remember, sir. That was two years ago.

Q In any event, sir, do you recall speaking to a Mr. Bennett and asking him to give you a bill for $600 for the repairs even though the amount of the repairs wasn't for 600?

A No, sir. What happened was I originally wanted the parts that I had on my car. I had aluminum fly wheel. I had to settle for a regular fly wheel. The difference is in the price right there alone was a couple hundred dollars. I couldn't afford to send that much money. So we had him change the bill around. He put stock parts on the car. Originally they weren't stock parts.

Q In any event, you did ask him for $600?

A No, only if I was going to have those parts. Originally I was going to have those parts and then I called--when I talked to my father, I called up, I called the guy back up, told him to forget about it, put on the regular parts.

Q Did you get a bill from Mr. Bennett of Korvet Enterprises showing you had paid $600 for your repairs?

A No, sir, not that I can recall.

Q You then made arrangements with Goodyear to replace the ti

A Well, we had it--just a few days or so and we thought we'd change the tires because they were not in condition, anymore, especially one, I am not a mechanic. The ones that were reall burnt down were the, what is it, the rear that gets most of the brake when you slam on your brakes, I think is the rear tires or the front tires. I don't remember what it was.

Q In any event, you had a question about the condition of the tires when you took it off the train, so you brought it in and had the tires changed?

A That's right.

Q Were all four tires changed?

A Yes.

Q And were the tires actually without a tread, were they fla, ball tires, racing-type tires?

A Well, it's the number--they weren't a racing tire. They were a sports tire. And they--when you look at them from a distance they don't look like you have any rubber. But when you go up to them, the one tire in either the front or the bac had the rubber if you take a close look at the things. It's a sports tire.

Q So you couldn't easily see that there was a tread on the tire?

A You can see there is a tread in the tire but not the one burnt out from over-braking.

I think common courtesy dictates better manners.

I have nothing further.

Mr. Browning: That's all I have, Mr. Examiner.

(Witness excused)

Mr. Kiel: Mr. Examiner, before the next witness is called, I wonder if I might go off the record for a moment?

Exam. Reilly: Off the record.

(Discussion off the record.)

Exam. Reilly: On the record.

GERHARD PETZALL

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) State your full name, please?

A Gerhard Petzall.

Q Mr. Petzall, what's your address, please?

A I live at 890 Blue Springs Lane in Frontenac, Missouri.

Q It's a suburb of St. Louis.

Q What's your occupation?

A A lawyer. I am a lawyer.

Q Are you admitted to practice in Missouri?

A I am.

Q Do you represent or have you represented Mr. John D. Levy, Jr.?

A I do.

Q In what connection was that, sir?

A In connection with a claim against AAACon.

Q Could you briefly describe for us the nature of the claim against AAACon of your client?

A Yes.

Mr. Kiel: If Your Honor please, I object to an attorney testifying with respect to litigation in a proceeding before the Commission.

Mr. Browning: Mr. Examiner, I think it will be developed later on why he has to come here to testify and I will go into it now if you wish me to.

Exam. Reilly: Let's lay a foundation as to why he is here.

Mr. Browning: All right, sir.

Q All right, sir.

Where is your client at the present time?

A I believe right now he is in St. Louis.

Q Is he--what is his occupation?

A He is in the Marines. He is a lieutenant in the Marine Corp.

Q Was there some hestitation or some reluctance that was indicated by you to me in connection with his presence here in the State of New York?

A Yes.

Q What was the basis for that, sir?

A After we filed our law suit in Missouri, we received--I received, my law firm received through the mail some letters indicating that AAACon had appeared in the superior--about to appear in the Superior Court in New York.

Q Was it the Supreme Court?

A Supreme Court, whatever the district level is in New York.

Q Yes.

A And In order to obtain an injunction against my client from proceeding with this law suit in Missouri. My client is actually both Lieutenant Levy and his wife.

Q And that was a reluctance that you expressed to me to have your client appear in New York, is that right?

A We then received--yes.

And the reason for that was we then received further correspondence that a judgment was rendered by way of default against Lieutenant Levy and his wife from proceeding further in the law suit in Missouri and that AAACon would vigorously pursue contempt proceedings if we continued in Missouri.

Q Are you at liberty to answer whether or not you did or your client did in fact proceed in Missouri?

A Oh, yes. We did proceed and AAACon obtained counsel in Missouri and filed a motion to dismiss and to abate based upon the judgment and the court in Missouri ruled there was no jurisdiction over the defendents in this suit, plaintiffs in that suit, and overruled their motion to dismiss and the case is now pending.

Q Would you explain very briefly what the nature of the claim of your client was?

Mr. Kiel: I object.

Exam. Reilly: I think he can answer the question.

Go ahead, Mr. Petzall.

A I first became aware of the claim when I was contacted by Mr. John Levy, who is--there is some confusion here. John Levy is the father. John David Levy, Jr. is the plaintiff in the law suit. We call him Dave Levy.

John Levy called me can told me he had been notified that Dave's wife, Lucy had arranged to have Dave's car transported from St. Louis, actually Clayton, Missouri.

Mr. Kiel: Objection, ask it be stricken.

Mr. Examiner, we have noe somebody telling him what somebody else was doing. I submit that's not only hearsay but about three times removed.

Mr. Browning: Mr. Examiner, we have explained why we can't have his client appear here. No. 1, he is in the Marine Corp. And No. 2, he might be in contempt of court here in New York. This is the only witness we can get and I submit under the rules of practice his testimoy may come in. And these were matters that were reported to him in the course as his legal counsel, in the course of his activities as legal counsel.

Mr. Kiel: Mr. Examiner, we have the man, he has a wife. He has a father, all of whom have been in touch with this attorney and there is no reason why persons involved in the situation. if we might call it that, could not come forward if they so desired, rather than have an attorney whose only information is clearly what he was told by people two and three times removed from the scene.

Exam. REilly: I find it difficult, Mr. Browning, to permit this witness to go ahead on this basis. It seems to me he is far removed from the actual matter of facts of the situation.

Mr. Browning: Let me, if I may, explore this a little more, lay a little more of a foundation, Mr. Examiner.

Exam. Reilly: Go ahead.

Q Did you handle a claim of John David Levy, Jr. against AAACon?

A I did.

Q Do you recall what the nature of that claim was, the claim that you filed and handled for him?

A It involved the transportation of Lieutenant Levy's automobile from St. Louis, Clayton, a suburb of St. Louis, to Quantico, Virginia, where David Levy was stationed.

Q What was the claim for?

A The automobile had been in an accident in Akron, South Carolina, and had been attached by the vehicle within which it came into collision. And my contact, first contact with AAACon related to an attempt to get that attachment lifted so that the Automobile could be repaired and delivered to Mr. Levy, Lieutenant Levy.

Q Were you successful?

Mr. Kiel: If Your Honor please, again I object. We are going far afield now beyond the testimony properly to be given in this proceeding. We have an attorney for a party and I submit it's improper.

Exam. Reilly: He is testifying now--I'm going to permit the testimony.

Q You say the car was being transported by AAACon from Clayton Missouri, to Quantico, Virginia?

A From Clayton, Missouri to Quantico, Virginia.

Q And it was involved in an accidnet in Akron, South Carolina?

A Yes.

Q And the car was attached?

A Yes.

Q You attempted to negotiate the release of the attachment with Mr. Zola?

A That's correct.

Q Were you successful?

A I was not successful.

Mr. R. Zola: Excuse me, Your Honor. I object.

Mr. Browning: I think there is only one attorney for the other side. I object to that.

Mr. Kiel: May we have the question read, please.

Exam. Reilly: Let's get this straightened out.

Who is representing these people, are you, Mr. Kiel?

Mr. Kiel: I am representing AAACon and Auto Trip and Messrs.

Zola are representing the applicant Auto Trip, also.

Exam. Reilly: Well, Auto Trip is not engaged in any manner with this witness.

Mr. Kiel: Except, Mr. Examiner, the Commission in their order, bringing Auto Trip into this, has indicated that it considers that the two companies are interconnected and to that extent there is--

Exam. Reilly: Well, I'm saying right now that they have no right to examine any witnesses except those witnesses who are adversary to Auto Trip USA. And Mr. Browning's objection is sustained.

Mr. Kiel: Mr. Examiner, do I understand that the import of your ruling then is that as far as these witnesses are concerned there is no connection between them and Auto Trip and what their testimony will be--

Exam. Reilly: You may take any conclusion you wish, Mr. Kiel. I have made a ruling and you are going to obey it, and the other two persons sitting there are going to do likewise.

Mr. Kiel: Mr. Examiner, may the reporter read the question and the answer and the last one, because I didn't read it.

Mr. Browning: Which question, mine or yours?

Mr. Kiel: The last question you asked and the last answer the witness gave.

(The reporter read back the record.)

Q (By Mr. Browning) Mr. Petzall, what was the nature of this attachment?

Mr. Kiel: Objection.

Exam. Reilly: It's already in the record.

Go ahead. You may answer, Mr. Petzall?

A The nature--

Q What was the reason for the attachment, if you know?

A Well, the vehicle had--was driven by an out of towner--a person out of state from South Carolina, had out of state license plates, and so the attachment had been brought to secure damages if any would be recovered by the automobile with which the vehicle had been brought into collision.

Q Did you inquire as to why the vehicle was in Akron, South Carolina?

A I did.

Q To whom did you inquire?

A Did I inquire as to why?

I'm sorry. I did not.

Q You never awked AAACon while it was in Akron, South Carolina, if it was going to Quantico, Virginia?

A I told them I couldn't understand why it would be there. I didn't ask why it was there.

Q Was that attachment ever lifted?

A Yes.

Q How was it lifted?

A We posted a $1500 bond. By we, Lieutenant Levy posted a $1500 bond for which he paid the premium in order to secure

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any damage that might arise.

Q Did you suggest AAACon reimburse your for that?

A I did.

Q For your client?

A I did.

Q What was their response?

A I don't recall. I would have to refer to my records. All we wanted to do was to get some--I didn't care whether it was AAACon or our insurance company, we wanted to get someone to come in and say they would defend the law suit. That's all they wanted.

And AAACon took the position they had excess coverage only. Our company took the position it was a frolic because the man had gone 350 miles out of his way. So they say they ddn't have any coverage.

Mr. Kiel: I move that be stricken, Mr. Examiner, what the different insurance companies had and what they wanted and what they did and what they said.

Mr. Browning: Mr. Examiner, I dn't know why it should be stricken. That's what he was told.

Exam. Reilly: I can understand why he would like to have it stricken but I'm not going to strike it.

Q You said AAACon or the company took the position that its insurance was only excess coverage?

A AAACon did.

Q Do you recall who it was in the organization that took that position?

A Ralph Zola. Ralph Zola--I got to the point I just threw up my hands. I called Mr. Zola and I said, "Would you--" who was always very polite by the way. Henever treated me with anything less than respect and courtesy, one lawyer to another.

I said, "Mr. Zola, would you mind, all we seem to--we see to have the man in the middle. Would you mind if we set up a three way conversation between you and our insurance carrier, a conference call and I will just sit back and the two of you argue about it. I don't care who releases the car. Someone do it so we can get this car repaired and back."

And we did this. At that time our carrier refused coverage because it was a frolic and they refused coverage, because they said that our arrier had no business refusing coverage a they had excess only.

Q Then what next occurred after that?

A After that telephone conversation--

Q After the refusal of AAACon to pay the claim?

A AAACon then--Ralph Zola, either told me or wrote and said that--let me say John Levy is--it's Dave Levy, the Lieutenant, had no collision coverage. So Ralph Zola said, well, inasmuch as there was no collision coverage that AAACon would pay for the damage to the vehicle if we took--if we made arrangements to get the vehicle released somehow from the attachment.

So we told the Sheriff, just go up to their office and serve whoever is there and they responded to that service.

Mr. Browning: I believe that's all I have, Mr. Examiner, at this time.

CROSS EXAMINATION

Q (By Mr. Kiel) Mr. Levy--

A I'm Mr. Petzall.

Q I'm sorry. Mr. Petzall, are you the attorney who is conducting this litigation in Missouri?

A My partner is.

Q Are you familiar with the amount of action?

A I have the pleadings,here.

Q Is it in fact in excess of $54,000?

A That's the punitive count. Count one was the breech of contract and there was a $50,000 punitive damage count and Count Two on the basis of fraud and misrepresentation.

Q As far as you are concerned, as I understand it, when you discussed the matter with Ralph Zola, you indicated that the body damages which needed to be repaired were $489?

A That was the Bill from--I think it was Bill Vernon Chevrolet in Akron.

When the car was subsequently delivered and we had it collected over there with some additional things that had to be donce in Quantico. I think the total came to $505, give or take.

Q A total of about $500 approximately?

A = For the repairs.

Q Now, was your client sued in connection with that accident for liability?

A We don't know. We hired a lawyer in Akron. I've never seen the papers in Akron. We were told they were attached. There was an attachment. I assume there was a lawsuit filed. I don't know what the law of South Carolina is.

Q Do you know that a lawsuit for an accident was brought against AAACon and was dismissed by the court in South Carolina with out--

A I didn't know that. May I inquire? It was dismissed?

Q So my clients advised me.

A Because it's good to know. We can get out premium back. We just paid another premium on the bond.

Q The bond premium was $30?

A $30. It's been going for two years now.

Q Isn't it a fact that when your action against AAACon was brought in St. Louis that they joined their ensurer, the Home Insurance Company, to defend the action as the company carrying their insurance?

A Who did?

Q AAACon.

A We sued AAACon and AAACon brought a third party proceeding.

Q Against their insurance company to join them.

A I have the pleadings here. Frankly, my partner is handling

Q Mr. Petzall, didn't you receive a letter from Mr. Zola indicating that if you were not satisfied with the payment for the repairs in full that you had the alternative of repairing the car and that you would then not be agreeing to settlement of claims against the carrier?

A I'm sorry?

Q You got a letter of March 3rd indicating that they were prepared to pay for the damages to the car, isn't that correct?

A That's correct. They sid they would pay for the--

Q And they wanted to be released of all further claims with respect to that?

A Right.

Q They also gave you an alternative, if you didn't want them to pay for all the damages to the car, that you were free to pay for them and then seek whatever monies you felt were owing to you from them in addition to the actual damages to the car?

A May I read the letter? It's bee--

Q Certainly. Go ahead.

A Yes, that's correct.

Q Now, as an attorney, the payment of these actual damages would be like a shipper of goods would be entitled to when there is damage to merchandise being transported and which lawyers sometimes call gneral damages, isn't that so?

A The payment of what damages?

Q Damages for what the car cost to be repaired?

A No. We didn't confine our claim to that.

Exam. Reilly: Letter dated July 2, 1969 from Dr. Singpurwalla to A. C. Backer, manager AAACon Auto Transport, Inc., in Los Angeles, marked for identification Exhibit 19.

(Bureau of Enforcement Exhibit No. 19, Witness Singpurwalla was marked for identification.)

Q Did you ever get a response from that letter?

A My memory fails me. What was the date of that letter please?

Exam. Reilly: July 2, '69.

The Witness: On July 18 I received a reply from Mr. Michael Brady, Claims Department, AAACon, New York, sympathizing with my complaint and suggesting that I contact my own insurance company.

In that letter I was also informed that since I had paid the last $50 to the gentleman who transported the car, this implied that I had accepted the car and that AAACon was forced to decline all claims because of that particular insurance contract.

Q Now, let's identify that if you would. Is that the letter of July 18th, '69?

A That's correct.

Mr. Browning: I would like to have it marked for identification.

Exam. Reilly: Letter of July 18th from Michael Brady of AAACon Auto Transport, Inc., to Dr. Singpurwalla marked for identification Exhibit 20.

it was maintained. Its brakes and all were taken care of according to regulations.

Q As I understand it, when the car came to you, it was not to your satisfaction, it was dirty?

A It was more than dirty. Dirty was one signal.

Q It had come from California to Washington and probably hadn't been washed before you got it.

A Fine. I understand that.

Q Also, one of your tires on one of the wheels was worn out.

A Fine.

Q And by the way, how old was that tire?

A I would suspect the tire might have been--and I can tell you exactly, it might have been 3 or 4 months old.

Q Do you know how many miles was on the tire?

A Not more than 1,000 miles.

Q This tire had just gone on the vehicle from coast to coast and you say it hadn't been gone more than 1,000 miles?

A When I believered the automobile it was not more than 1,000.

Q Was it a tire on the front wheel?

A I don't recall.

Q You don't remember?

A I don't recall, no.

Q In any event, this was the only tire in that condition that you are complaining about?

A Yes.

Q Are you familiar with automobiles sufficiently to tell us how you think one out of four tires got worn down while the other three didn't?

A I am familiar with automboiles and I do understand the implications of one tire getting worn down butmy point of complaint was not the tire alone. It was mor than the tire, you see. And if you would give me an opportunity I would explain it.

Q Didn't you explain it in your letter saying--your letter of July 1st, which is Echibit 19 was the first one. You explain what you found?

A I believe it's July 2nd, isn't it?

Q It's July 2nd, I'm sorry.

A I appreciate that.

Q When you say the tire was blown out, you intended not that there had been a blow out in the tire and it was--had a hole in it, but that it was worn down?

A That was right.

Q Did you call the local office of AAACon in Washington when the car was delivered?

A Yes. I'll tell you at what point I called.

Q Let me ask the questions.

Mr. Johnson: The witnss hadn't finished.

A Yes.

Q Did you speak to Mr. Marshall--Walters, excuse me.

A Yes, sir, I did.

Q In any event, did he advise you that if the car was not clean and satisfactory not to pay the driver the $50?

A I wish you had let me speak before because I would have circumvented this question.

Q Would you answer the question.

A All right. When the automobile was delivered to me by these young gentlemen who I'm not going to describe in detail to you at thus moment, I noticed just the condition of the car and I was disturbed. I told them at that point that I was not going to pay them the $50 that htey were supposed to receive but these people lived in Ohio. For some reason had come to Washington and had to hitch-hike back, had no money whatsoever and I felt that the dirty automboile and the broken arm rests and the rubber lining which was removed were minor considering the fact that my automobile was with me.

I did go and pay them the $50 and did not notice the excessive mileage. As soon as I noticed the excessive mileage which was after these people left me I called Mr. Scott at Los Angeles and I also called this gentleman in Washington to register a complaint immediately at which point he advised me to write to the Claims Department and this was done very sympathetically and nicely.

Q Do you havr the exact mileage when the car was delivered to you?

A Yes, it was written on the freight bill, car owner's copy, a copy given to AAACon on which the mileage was noted as 38,986.

Q That's on Exhibit 25?

A Yes. That is the pick up mileage.

Q I understand that.

Where is the delivery mileage?

A Delivery mileage is not written because as soon as I noticed it I called the AAACon representative to come and inspect. And which point he said he didn't come.

Q Wherehave you written down anywhere the delivery mileage?

A I haven't written the delivery mileage but in my letter I indicated the excess mileage which is over the 3,000 miles which are allowed from west coast to east coast.

Q You don't have--

A Haven't recorded it, sir.

Q You have no record?

A No record but I suspect AAAACon was obliged to come and check it out as soon as I report it and not give me a chance to ride it more.

Q You also complained that the charge was too high?

A No, never complained about it.

Q Never did?

A No. The charge was fine, was satisfied.

Q In your letter which is Exhibit 19, do you remember saying it is AAACon--for AAACon was paid an exorbitant sum of $170?

A Yes, I think it is exorbitant but I didn't want to complain about it. I was willing to pay it when I accepted to send my car.

Q Didn't they know--you knew what the amount was going to be?

A Of course.

Q When you shipped with them previously I think you mentioned it in your letter that you had shipped with them in 1968 also?

A That's right, sir.

Q And this time the problem as you indicated was that you were more satisfied when they used an older gentleman as a driver than a young gentleman?

A Yes.

Now, Mr. Attorney, would you please let me speak?

Q Well, Mr. Browning will have an opportunity to ask you questions. If you will just answer mine for the time being I'm cetain we can cover everything.

A Sure.

Q Now, you were advised by AAACon, were you not, in their letter of July 18th that they declined your claim, that they felt that your claim was not proper?

A That's right.

Q And you have that letter which is now Exhibit 18?

A I don't have it with me but it's there.

Q And then they suggested to you that if you wished, since they were refusing to pay a claim which they did not feel was proper, that you could go to your insurance company perhaps and if you did, they would be glad to give you any information or supply your insurance company with any information that you might need, isn't that so?

A That is so but my rates would go up, not for my fault.

Q I understand. But as a practical matter so we can get the sequence of reevents, AAACon told you they didn't feel they were responsible and weren't going to pay your claim?

A That's right.

Q Then they would suggest they would be glad to cooperate with you if you could get paid somewhere else if you felt you were wronged?

A That's right.

Q How did you figure the amount of your claim of $200, what was it based on?

A It definitely was a heuristic figure based on the fact 700 extra miles through Colorado, and Mr. Kennedy admitted to me he had a little detour, went through Colorado, and I figured 200 as a heuristic figure.

I didn't press for the claim and I pressed more for the morals and the ethics and the principals of it, but I felt that $200 was an appropriate figure considering the amount of depreciation that my car had to undergo because of driving in these areas where the atmospheric pressure is different and it was a heuristic figure, I'm willing to admit it.

Q I would appreciate if you would tell me what you mean by heuristic?

A A heuristic is an arbitrary figure.

Q You wrote a number of letters to AAACon, didn't you?

A Yes, sir.

Q And you got answers to all of them?

A Not to all of them.

Q How many letters did you write?

A I just don't recall but you have them right before you, sir.

Q We don't have all the letters, do we?

A I would presume you would have all the letters I wrote to AAACon.

Q Didn't you get a letter from Mr. Tomany of the Commission recapping all the letters he had gotten from you and all the responses AAACon had made to your letters?

A Yes, I did.

Q They answered substantially all of your correspondence?

A I don't have a copy of their letters. Do you have it?

Q I show you the April 15th letter from the Bureau of Operations of New York City, TIC, signed by Mr. Tomnay, a copy of a letter sent to you.

Do you recognize that letter?

that that was absolutely wrong, he certainly couldn't do that. So I wasn't really worried about the matter at that point.

Q Well, did you try to get your back back east?

A Not yet. I wanted to settle this--I didn't want to pay for the repairs because I felt that I had no obligation to pay for the repairs. I wanted to find out what had happened to my car. One of the things that happened to my car is, as I found out later through the comparison of the two work orders from my preparation and their repair was that there was a difference of 1700 miles, that the driver that they had authorized to drive my car had driven the car seven--well, give it 50, maybe 1650 miles from Los Angeles to Death Valley Junction, which is less than 300 miles away from Los Angeles.

Q In other words, you computed that again by comparing the work orders, the mileage on the work order as it appears in Hollywood, or, rather, as it appeared in Hollywood with the mileage that appeared on the work order in Las Vegas, is that right?

A Yes, sir. But at the time that I did write to them with my $50.00 check, my mother's $50.00 check which I have a copy of here, I know that he had had it for four days, that it had been seriously damaged and that he had authorized repairs on it. So I wrote to them that I had fulfilled my obligation on the contract, the delivery date for the car had passed and that I had--I was displeased with the way that they had behaved, before, if it was broken I had to fix it, pay for it, the fixing of it. And so since they said that the driver did not authorize repairs my lawyer obtained for me the work order from the Sunland Volkswagon with the signature of John J. Sorace in the spot that says, "I authorize repairs," and mechanical lien.

On receipt of this work order the mileage question came up. My lawyer wrote to AAACon people and pointed out to them the difference in mileage was extremely excessive and beyond the normal expectations of someone who is having their car transported and he also pointed out to them that part of their bill of lading says the driver may make any necessary repairs to said vehicle of less than $20.00 without shipper's consent and repairs in excess of $20.00 with shipper's prior consent.

Q That's your lawyer's letter to them?

A Yes, pointed out to them this.

Q What's the date of that letter?

A The date of this letter is January 23rd, 1970.

Q Is this a photocopy of it, Ma'am?

A Yes, sir.

Mr. Browning: I would like to have this marked for identification, Mr. Examiner.

Exam. Reilly: Letter of January 23, 1970 from William Hammond to Zola and Zola marked for identification Exhibit 34.

(Exhibit No. 34, Witness White, was marked for identification.)

the driver at destination if he presented bills in excess of $20.00. This is not the case in regard to your car. The driver is not seeking any reimbursement, and so forth.

Q Who is that signed by?

A Mr. Ralph Zola, under the AAACon Auto Transport Incorporated letterhead.

Q The date was February 19th?

A February 27th.

Q 1970?

A Yes, sir.

Q Okay. What, if anything, did you do next?

A What did I do next?

Q Yes, what did you do next, Ma'am?

A I wrote to Mr. Zola and I told him that I felt that an unsupervised irregular side trip, wherever this driver went, that was irregular and I also felt that the fact that he authorized repairs was irregular, since his contract said he couldn't do it. The Sunland Volkswagon told me the car was badly abused, that the engine was completely burned up, that it had been driven not very skillfully and not very carefully, to put it midly.

Q When was that letter?

A I believe--I don't have a date on that letter. I believe it was after the 27th.

Q But you do have a copy of it?

did not have my car. I was leasing a car at this point which is several months later.

Mr. Kiel: May I have the question and answer, please, I missed it.

(Record read)

Q Miss White, was your car ever repaired, and if so, by whom?

A It was repaired by the Sunland Volkswagon and I paid for the repairs.

Mr. Kiel: What company, please?

The Witness: By the Sunland Volkswagon. It was already repaired by them at that point.

Q Okay.

A And I paid for it.

Q How did you pay for it?

A I paid for it by selling the Sunland Volkswagon my car.

Q For the amount of the repairs?

A Well, for $70.19 more than the repairs.

Q That would have made it how much money altogether?

A I sold them my car for $500.00.

Q Okay. How much had you paid for that car?

A Just a minute. I paid $1156.95 altogether, with all charges.

Q And when was that that you bought the car?

A I bought the car June 21st, 1969.

servicing in California in Hollywood?

A Yes, sir.

Q On the 5th of December?

A 6th.

Q Well, will you look at Exhibit 30. It indicates that the date was the 5th.

A Could be. Okay.

Q And the paid stamp on the second page indicates that you paid for the repairs on the 6th.

A Okay.

Q Then the car was turned back to you on December 6th, is that correct?

A Yes, sir.

Q And what was the day that you said you turned it over to AAACon?

A The 15th I believe.

Q Do you have any independent knowledge with respect to what your odometer actually showed as being the mileage other than what is on Exhibit 29 and Exhibit 30?

A That's the work order there.

Q Right.

A No, sir. It wasn't taken by the AAACon when I gave them my car.

Q I understand. You didn't take it either?

A No, sir, I didn't.

the driver followed other than the information that you received through the driver's letter?

Mr. Browning: Repetitious, Mr. Examiner. We have been over this time and time again and it's wasting time.

Mr. Kiel: May I tie this question in with the next one.

Exam. Reilly: All right. Go ahead.

A No, sir, I have no information.

Q Did you indicate to AAACon that you had information that the driver had gone to Mexico?

A No, sir, I suggested that he might have gone to Mexico on the amount of mileage that he had put on my car.

Q Do you have any information that he had gone to Mexico?

A No, sir, I suggested that he could have.

Q Did you have any information to suggest that the driver might have been carrying as you called it contraband to Mexico?

A No, sir, I suggested that he could have.

Q Without any basis for that information?

A Other than that I did not know, AAACon did not know, no one knew where he was during those four days.

Q And did you indicate after you learned that the driver was a police officer that perhaps he really intends to go straight and be a policeman?

A Yes, sir.

Q Did you think that he was a criminal?

A I didn't know what he was.

A Yes. I am.

Q Did you handle that claim, sir?

A I am handling it. I have and it's still pending in court.

Q Where is Mrs. Whitney at the present time?

A She is in Spokane, Washington, 3,500 miles distant from the east coast with her husband.

Q She is married and--

A She is married. Her husband is a career non-commissioned officer in the United States Army who was transferred from the east coast to the west coast prior to the time this contract to transport the car was made with triple ACon.

Q What did that contract cover, sir, the transportation of a car from the east coast to the west coast?

A It covered from Boston to Spokane, Washington.

Mr. Kiel: If Your Honor please, I would like to object to any testimony by this witness with respect to this matter and I would ask for permission to ask the witness two questions on voir dire because I have information that another attorney is handling this matter and not Mr. Jacbos.

Exam. Reilly: You may ask him the question on voir dire.

VOIR DIRE EXAMINATION

Q (By Mr. Kiel) Are you familiar with a firm of Friedman and Atherton, Counselors-at-law in Boston.

A I am, very much so, yes.

Q And as a matter of fact, is this matter being handled by us to take out collision. Unfortunately, my client didn't have it. She had everything but collision insurance. Not being able to get the information that I considered necessary both from a fiduciary, like triple ACon Transport to their customer, but legally I made complaints to the Consumer's Fraud Division of the Attorney General's Office, the Federal Trade Commission, the Interstate Commerce Commission and last but not least, the Department of Transportation, Volpe's Department, which has jurisdiction over reporting accidents of cars involved in the interstate commerce. And of--and then I inquired by writing a letter to the sheriff of Salt Lake County in Utah if there was a report filed of an accident. And the report came, no report filed. I then wrote to the Department of Motor Vehicles, Capital of Utah, Salt Lake City, Department of Financial Responsibility of Motor Vehicles if a report was filed and they said no report was filed. I finally got a report from the Department of Transportation which gave me the information I wanted.

Q What's the date of that report, sir?

A Well, this report--it says November 10, 1969.

Q Who made out the report, sir?

A The report is purported to be made out by a David J. Silver but the signature is exactly the same as Bob Maxwell, Claim Supervisor, dated 11/7/69.

Mr. Kiel: I object, Mr. Examiner.

should go to arbitration. However, in order to find out what happened I adopted the procedure of trying to discover facts and I propounded interrogatories to the defendant corporation to be answered by an officer of the defendant corporation having a particular knowledge of the facts for the purpose of finding out whether they got the car and what happened to it. The answer I got to those interrogatories were completely evasive.

Mr. Kiel: If Your Honor please, I submit that what we have here is we have a litigation. We have an attorney for a party bringing an action who has a partisan interest and who is expressing an opinion and I object and move that it be stricken as being improper--

The Witness: I have no partisan interest in this case, Mr. Kiel.

Mr. Kiel: Please let me finish my objection. I move that the answer be stricken.

Exam. Reilly: I'm not going to strike. He may testify as to all aspects as I stated before on the claim with which he has personal knowledge.

A In answer to one of the questions as to who was driving the car and what happened to it, a Mr. Zola--and I'm trying to find out which one answered the questions, stated under oath and subject for pains and penalties of perjury that he didn't know, that no agent or servant of his, of the company had transported the car and characterized him as an independent contractor and that therefore he couldn't answer the question.

Subsequent to that we were served with a contempt process alleging that we had violated the terms of the original stay order in the Supreme Court case because I had propounded interrogatories to discover certain facts and my client was held in contempt and continuing contempt.

Exam. Reilly: This is by the Court of the State of New York?

The Witness: The Supreme Court of New York alleging that he is in contempt and continuing contempt. That, Your Honor, is the state of affairs as far as the pleadings are concerned. The case is on the list, will be called for assignment for trial I think in about two weeks.

Q Mr. Jacobs, you mentioned to Mr. Kiel that you have no partisan interest in the case.

What did you mean by that?

A I mean I'm just here as a witness to tell the court and the parties to the case what my file discloses. It's open to insepction by anybody who wants to look at it and I have no interest in this case or its outcome. I know nothing about these administrative proceedings until I was served with a subpoena at my office ten days ago.

That's all I know about this case.

Q Did you ever determine through any means what happened to the car?

A The only thing I know is what the D.O.T. report says, Department of Transportation.

Q Do you know whether or not Mrs. Whitney ever got her car back, if you know?

A No. She hasn't got the car. It was wrecked I understand beyond repair and abandoned. And according to this report, it happened in Salt Lake City, Utah on Route 50-6.

Q Do you have any papers in your file to indicate that triple ACon disallowed the claim or declined the claim, and if so, what basis, on what basis?

A Well, Mr. Maxwell told me that the company disclaimed liability because of inherent defect. They said the brakes failed. And I had told him over the phone that we had documentary evidence that the car was completely inspected, with new tires from Sear's Roebuck and that the car was in perfect running order when it was given and turned over to the driver for triple ACon and I said any car can have his brakes fail if it's driven improperly, even a brand new 1972 Cadillac if it's abused on the highway something will happen to it.

Mr. Browning: Thank you.

That's all I have.

Mr. Johnson: Excuse me.

Mr. Browning: Excuse me just a minute.

Q What was the date of the shipment of the car, sir? Do you know when it was picked up?

A Yes. Pickup date, October 27th, 1969, deliver the car to Staff Sergeant Edward R. Whitney, Fairfield Air Force Base, Spokane, Washington, with his telephone number. Total price, 190, 130 paid, balance of $40.00 to driver, and that's when the car was picked up.

Q What was the year of the car and make of the car?

A It's a 1966 Pontiac hardtop.

Q All right, sir.

Thank you very much.

CROSS EXAMINATION

Q (By Mr. Kiel) Sir, do you know the status of the legal action in Massachusetts at the present time?

A It's on the auditors list for assignment for trial on October 29th.

Q Have you been advised, sir, by the attorneys that are handling the trial that they moved to have it dismissed?

A No.

Q You don't know that?

A No.

Q When was the last time you spoke with them about the status of this case?

A To the attorney for triple ACon?

Q No, the attorney representing Mrs. Whitney?

A Oh, I spoke to him several times in the past last week.

Q Did you inquire as to the status of this matter?

A Yes.

Q Did he indicate to you that he had filed to have it dismissed?

A He stated that they were talking about it. Now, they could have done some other procedure. They could have filed an answer alleging that there was a stay order and filed certified copies in court which could have been part of a pleadings and taken up but they didn't see fit to do that. And the only answer in court is the general denial. What they are going to do after that I don't know.

Q With respect to the attorneys representing Mrs. Whitney, haven't they informed you that they've requested that the matter be dismissed, that they are dropping the suit?

A Oh, no. No. We were discussing dropping the suit in order to bring it in Spokane, Washington because we didn't want her to travel three and a half thousand miles to the east coast. The cost of that is economic insanity, Mr. Kiel. And counsel in Washington who represents the United States Air Force and to whom this matter was referred to are discussing the advisability of bringing suit in the State of Washington but there is a question of jurisdiction and service and I am in no way able to answer that question at all.

Q Now, sir, do you have your file and records with respect to this matter in your communications with AAACon Auto Transport?

A We--I have everything here.

Q Do you have a copy of the letter of November 20th to you advising that the car was--went off the road due to brake failure on October 31st?

A And that is dated what, Mr. Kiel?

Q November 20th. It's a handwritten letter.

A Yes, I have.

Q You have a copy of that?

A I have the original.

Q So on November 20th you did know what happened to the car and where it happened?

A It said Utah. But Utah is a pretty big state and I didn't know what city it happened, what county.

Q The letter reads it went out at Route 50-6 in Utah?

A Yes.

Q At about 9:00 a.m.?

A Yes, that's right.

Q So did you check a map to see where Route 50 and 6 were?

A No, I didn't. I wrote to the sheriff of the county of Salt Lake City and to the Financial--and there was no report which is required under their law.

Q Will you tell me, sir, how you came into possession of the motor carrier accident report form BMCT--no, 50T, which you read from when you indicated it was stamped with a copy of some government agency?

A I wrote away for it and they sent it to me.

Q Whom did you write to?

A To the Department of Transportation.

Q And when did you write such a letter?

A Sometime in July of 1970, which was about seven months after the accident.

Mr. Kiel: Mr. Examiner, my understanding that the filing of accident reports with either the Interstate Commerce Commission or now with the Department of Transportation requires that agency maintain those as classified documents which are not available for public use and for litigation purposes, and I ask that the Examiner take official notice of that fact.

Exam. Reilly: Well, what you state to be a fact.

Mr. Kiel: What my understanding is, yes.

Q Do you have in your records a copy of your letter of June 23rd, 1970 with respect to the interrogatory question and you asked in that letter when the accident happened giving date and hour?

A Well, I have a copy, Mr. Kiel--the original was filed with the clerk's office. I have a copy.

Q No. Let me show you the original.

Do you remember that letter that you wrote?

A Yes, surely.

Q That's dated June 23rd, 1970?

A I said I'm still waiting for the following information.

Q That's right.

Now, the information when the accident happened, giving the date, hour and minute. Now, isn't it a fact on November 20th you got that information, that on October 31, 1969 at about 9:00 a.m. the accident occurred?

A I wanted that information from AAACon with all the other relevant information attached to it so I could follow it chronologically. I didn't get it.

Q You had it in the letter of November 20th and you asked for it again?

A Itwasn't complete, Mr. Kiel. As attorney I couldn't rely on anything that was in that handwritten letter.

Q In any event, you considered that because you didn't get it twice the way you wanted it that it was evasive?

A No, oh, no. The evasiveness was in the answer to interrogatories. They didn't have to give me that information if they didn't want to.

Q Was that submitted, were those interrogatories submitted in an action in the court in Massachusetts?

A Yes.

Q You are an attorney in Massachusetts?

A Yes.

Q Is there a procedure whereby you may move to have a

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defendant respond to an interrogatory if you are not satisfie
with their response?

A There is a procedure?

Q A procedure.

A It's unstaisfactory.

Q Is there a procedure?

A There is a procedure called a motion to--

Q Did you make a motion?

A No, I didn't. I let it stay the way it was because that'
the way I wanted it to appear on the record, sir.

Q And you started to indicate that you are not satisfied with the Massachusetts procedures, did I understand that?

A Oh, no. I'm very well satisfied with it.

Q Do you remember the causes of action that you stated so eloquently when testifying with respect to the legal action?

A Well, the declaration is right here.

Q As a matter of fact, isn't the claim for, one thing, breach of contract, damage to motor vehicle, isn't that the cause of action that we are talking about?

A Count one says conversion, that the defendant converted t
its own use a '66 Pontiac Grand Prix. And count two is negligence in the mean in which they performed their contract, and count three and count four are--one is for fraud and deceit and the other is for just a breach of contract, sir.

Q Well now I have a paper which appears to be one prepared by you, at least it has a stamp which says Louis Jacobs, Attorney. And I show you that.

A Yes.

Q Is that a paper that you prepared?

A Yes.

Q And is that on an official form of the Commonwealth of Massachusetts Superior Court for the County of Suffolk.

A That's a summons that we get from the court and we fill it out and give it to the sheriff.

Q And you did fill it out?

A Yes.

Q And there is a line which has to be filled out which states the nature of the claim?

A It says briefly you should put it down.

Q What did you put down?

A I put down breach of contract, damage to motor vehicle.

Q Is that all that's there?

A That's all there is, yes. But I'm not limited to that, sir.

Q This is the paper that a defendant would get from the court?

A That's to give him his first warning as to what defenses to prepare. The declaration is the one on which he has to react to.

Q I didn't understand your statement with respect to the interrogatories in all instances. Did I understand that you undertook to go and arbitrate your claim against AAACon and attempt to settle it?

A I don't get that, Mr. Kiel.

Q Did you undertake to agree to arbitrate the claim in an attempt to settle it in New York simply without the need of your client or anyone else to appear but merely file the papers before the arbitrator?

A Before I studied the case I think I wrote a letter to Mr. Zola stating that perhaps it would be a good idea to arbitrate but upon more--giving it more thought and so forth, and my client being in Spokane, Washington, and for various other reasons, counsel changed its mind.

Q Do you recall when you first wrote and agreed to arbitrate?

A May have been within a week or two after we got a show cause order from the Supreme Court of New York, which pleadings are all in here. That was something which was done on the spur of the moment. It's of no consequence at the present time.

Q As a practical matter, as an attorney, when you draft contracts, don't you in many instances put in provisions for arbitration to make the settlement of any factual disputes relatively simple and less expensive?

A Only if the parties understand it, that they are waiving their rights at law and I just did it on a couple of building contracts. But in this case here my client knew nothing about arbitration, sir.

Q With respect to the contracts that you referred to, do you feel that that is a desirable way of resolving such--

A Arbitration?

Q Yes.

A I think it's excellent. I'm a member of the American Arbitration Association.

Q Well, now, can you give me the reason why you felt after you first determined that it would be a desirable way of settling this dispute to arbitrate it, that you decided that you didn't want to arbitrate?

A First of all, it would cost my client five to six hundred dollars to come from Spokane, Washington, to the City of New York, transportation, hotel bills and loss of income to sit down and arbitrate this in a city where she is a complete stranger. And after discussing the matter with her by long distance telephone and by correspondence and going over the merits of the case, I thought that I had better chance to win it at an action of law than I did in an arbitration.

Q As a practical matter, you are aware that no personal appearance is necessary to arbitrate but merely for you to file such documents as you have in your possession and the arbitrator getting all of the papers would make a decision with respect to the facts.

got a head of the department. He got on the phone and he called Coys directly in front of me and they tried to make some arrangement to see if they can get my car in shape, took approximately, oh, about a month before he got my car in shape to continue on to its destination in New York.

Q What was the extent of the damage, do you know?

A No, I never did get--

Q Do you know how much the--well, who paid--

A My insurance company paid, plus I had to forward, and I have my copy of my check to Coys--I beg your pardon. The exact name is Competition Auto Body. The man's name I believe was Coys. I forwarded him a $100 for the deductible before he would release my car.

Q What did the insurance company pay, if you know?

A I think they paid about--less my hundred about $700.00.

Q Now, once you got the car in shape for the completion of the journey, what did you do at that point. It was a month later I think you testified.

A Well, it took until December 15th, in other words, the accident occurred October 24th. December 15th they continued the destination of the car. In the meantime between October 25th and December 15th I went down personally to see them. I spoke to them. They ignored me. They wouldn't do a darn thing about it.

Q You are talking about the Zolas?

Mr. Nadler's file. If it isn't, then my understanding is not correct.

The Witness: Well, there must be because I gave them a copy of this here. I gave the Interstate Commerce Commission a copy.

Q (By Mr. Browning) Well, this may have been the copy the I.C.C. made, is that correct?

A It's possible.

Q But in any event, it's identical with the original letter you have in your file of the same date, June 9th, 1970?

A The content is absolutely identical.

Mr. Kiel: I object.

Mr. Browning: I haven't finished.

Q Under the letterhead of triple ACon Auto Transport?

Mr. Kiel: The witness is answering before I object. Mr. Browning is berating me. Not only did the witness answer but he started a second question and he still berated me for trying to get an objection.

I may not be sustained in my objections, but I have the right to make them.

Mr. Browning: Make them.

Exam. Reilly: All right. Enough of the speeches, Mr. Kiel, Make your objection.

Mr. Kiel: I object and ask that the answer--

Exam. Reilly: What are you objecting to?

The letterhead that is on Mr. Nadler's copy is not on Exhibit 42 and the matter below enclosures is not on Mr. Nadler's copy although it is on 42.

Those are the differences.

Exam. Reilly: That already has been in the record.

Q (By Mr. Browning) Mr. Nadler, you indicated, did you not, that you received another letter from triple ACon regarding your claim, or one of your claims?

A I received two letters.

Q Yes.

A One on June 19th and I believe the other one was January--

Q January 7th, is that the one?

A January 7th, 1970, the second letter is dated June 19th, 1970.

Q All right.

Now I hand you--

Mr. Browning: I will show it to Mr. Kiel, showing Mr. Kiel the exhibit I propose to have marked for identification and identified by the witness.

Q I show you a photocopy of a letter of Janaury 7, 1970, from a Bob Maxwell.

Is that an exact copy of what you have in your files, sir?

A Yes, it is exact.

Mr. Browning: I would like to have this marked for identification, Mr. Examiner.

Q What did the contact consist of? What were you trying to accomplish?

A I was looking--I used Drive Away Company to take my car to Florida which I had a lot of trouble with. And I wanted to get it back to Massachusetts or New Hampshire and these people advertised in the Miami papers or Lauderdale papers and I went over to see their--at their office.

Mr. Keil: Would you please ask Mr. Bracken, he talked about a Drive Away Company. They advertised in a newspaper?

Exam. Reilly: What he said he used a Drive Away Company to take the car down. He was dissatisfied with it and then he looked in the newspaper ads for another company.

A So I went over in Lauderdale to Oakland Boulevard and at your office I met a Mr. Wolf who conveyed the opinion that--in fact, he told me he was from Boston, and I'm a native of Boston and I told him what I was looking for, that I wanted an experienced driver. I told him of some of the troubles I had on the way down and he assured me that he transported all of the baseball players'cars down to Florida and he said he just had just the follow in mind. I said when you get him, sned him over to my place, I want to look him over and talk to him.

Q This is Mr. Wolf who is with triple AAACon, is that right?

A That's right.

Q What happened then?

of triple ACon?

A Richard Meier, M-e-i-e-r.

Q All right. What next happened after that, Mr. Bracken?

A This driver, he called and picked up the car and I think on the 31st of March--of April. No, March, as I was leaving April 1st for home.

Q Where was your condominium located again?

A At 6000 North Ocean Boulevard, Ft. Lauderdale, Florida.

Q All right, sir. Did he transport your car north?

A He transported the car north, yes.

Q Did you receive--did you have any contact with triple ACon during the transport of your automobile north?

A No, sir, I did not.

Q How did your automobile arrive, in what condition?

A The automobile arrived in first class condition.

Q Did any event transpire between the pickup of the car in Ft. Lauderdale and the delivery of the car to you?

A Yes. I received a telephone call from the driver advising me that the night before the car was broken into.

Q Did he advise you where it was broken--

A And I was much concerned because the back of the trunk, in the trunk was all my personal belongings. But he said, no, it was the left hand door, the glass in the left hand door. And he asked, he said what do I want--asked me just what I wanted to do about it and I told him to have it repaired.

your car down to Florida?

A Well, I--

Q Was it Auto Driveaway Company?

A I believe it was Auto Driveaway, yes.

Q And sir, did you comment before on the witness stand here in this hearing room that the AAACon people were gentlemen compared to Auto Driveaway's treatment of you?

Mr. Johnson: Have you finished your question, Mr. Kiel?

Mr. Kiel: Yes, I finished the question.

Mr. Johnson: All right, Mr. Examiner. I am precluded from asking these witnesses any question despite the fact that I am a party. Now we get to another point, we find we have cross examination going into something that was not even brought on on direct. And it's not the problem with Auto Driveaway we are confronted with here. It's the problem with triple ACon and I don't believe the question has any relevancy or the answer has any relevancy for that matter.

Mr. Kiel: Mr. Examiner--

Mr. Johnson: This was off the record discussion.

Exam. Reilly: The fitness of protestant is not in issue, Mr. Kiel.

Mr. Kiel: I appreciate that. But I think the question of the relative belief of a witness with respect to service and courtesy that he received from two carriers, both authorized by the Interstate Commerce Commission, is relative to a finding of the applicants fitness.

Mr. Browning: I object, Mr. Examiner.

Exam. Reilly: An applicant is either fit or he is not fit. He is not relatively fit.

The objection is sustained.

Q Would you tell me, sir, what caused you to use AAACon?

A As I've already stated, my experience on the transport of the car down to Florida forced me to look elsewhere for a carrier to take it back.

Q Comparing your experience with the people that took your car down with AAACon who returned your car, how would you do that?

Mr. Browning: Mr. Examiner, I believe that is beyond the scope of my direct examination.

Exam. Reilly: This is beyond the scope, Mr. Kiel.

Mr. Kiel: I assume that you are sustaining the objection to the question.

Exam. Reilly: I certainly am, yes.

Q Mr. Bracken, as I understand your position here as a witness and the correspondence which is Exhibit 44, which is your letter to AAACon in Ft. Lauderdale, you were satisfied with the service and the car arrived in good condition?

A The car arrived in good condition.

Q When the driver delivered the car after he had had the window replaced, he had given you a bill from an automobile it I wouldn't have shipped it down.

Q As a matter of fact, sir, when you wrote AAACon they promptly responded to your claim and acknowledged it, even though they declined it?

A That's right.

Mr. Kiel: I have nothing else.

Mr. Browning: Mr. Examiner, I just want to have the witness identify the bill of lading which you say he did not sign and to which Mr. Kiel has been referring.

REDIRECT EXAMINATION

Q (By Mr. Browning) Would you identify this as a photocopy of that bill of lading?

A Yes, sir.

Q Is that correct, sir?

A Yes.

Mr. Browning: I would like to have that marked for identification, Mr. Examiner.

Exam. Reilly: AAACon bill of lading, the lading number did not come out in the duplication process but it reflects the car was picked up from Mr. Gerald Bracken on March 31, 1970, marked for identification Exhibit 48.

(Exhibit No. 48, Witness Bracken, was marked for identification.)

Q Mr. Bracken, so it is clear in the record, when is the first time you saw the bill of lading?

Q I see. And you paid the driver then--

A I paid him $40.00, plus this repair bill made out to AAACon.

Mr. Kiel: Thank you, Mr. Bracken.

Exam. Reilly: The witness may be excused and thank you, sir.

(Witness excused)

Exam. Reilly: You move the exhibits?

Mr. Browning: Yes, I move the admission of 44 through 48.

Exam. Reilly: Do you have any objection, Mr. Kiel?

Mr. Kiel: No objection.

Exam. Reilly: 44 through 48 received.

(Exhibits Nos. 44 through 48, Witness Bracken, were received in evidence.)

IRVING MOROSS

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) State your full name, please.

A Irving Moross.

Q And your address?

A 8 Rolling Hills Lane, Harrison, New York.

Q Mr. Moross, what is your occupation, sir?

A I'm Vice-President and General Counsel and Secretary of the Motion Picture Division of Columbia Pictures Division, Inc. Columbia Pictures Industries, Inc.

Do you remember that letter that you wrote?

A Yes, surely.

presented with a bill for $24.38 which included $9.00 for something about a heater hose. There was no bill but just added to the delivery sheet, $15.00 for towing and a tax of three thirty some cents, so that brought it to $24.38.

At that time he spoke to the driver and that was the first that we knew that this driver had never driven a car in this sort of business before and that he had finished law school here in New York in May and was not to go towwork until September and was on his way to a vacation up in Alaska, that he was asked about how the car reacted.

Mr. Kiel: Mr. Examiner, I object.

We have a man in New Jersey attempting to tell us something that was told to somebody in Yakima, Washington. I submit that is hearsay and unless we have some protection of our rights we are really put in a very, very disadvantaged position. We have no way of testing this man's knowledge of the fact. No doubt he is going to tell the truth and nothing but the truth as he knows it. But we have no way of knowing that the information he has is factual.

Exam. Reilly: Objection overruled.

A Mr. Archer, the driver of this car, is employed here in the City of New York as a lawyer for some firm now. At least he took the job effective in September of 1969. And my son asked him how the car had reacted on the trip, and he said it went very well--

Mr. Kiel: Mr. Examiner, I object to the testimony by this man of what someone told his son. I submit that's completely improper and irregular, and especially when they are separated by a whole continent.

Exam. Reilly: I don't quite understand what the distance has to do with it but you are still overruled.

Go ahead, Mr. Witness.

The Witness: All right. And he advised that the car worked very well except when he got going between eighty and ninety miles an hour when there was a slight shimmy in the front. He also advised that he had spent sometime with his parents up in the Catskill area of New York, that he then went to Chicago and visited with friends, took some passengers to Burbank, California, went from there to Palo Alto, that he spent a few days in San Francisco, and then went up to Portland, Oregon, and each time he picked up passengers, and then delivered the car in Yakima, Washington, with fifteen hundred more miles than the three thousand miles from here to Yakima.

Mr. Kiel: Mr. Examiner, I ask now that this testimony be stricken. This is completely unsupported, unfounded and is not proper evidence in this proceeding. There is no way that I can protect my client from this type of testimony and Mr. Harrington being a lawyer is probably wondering how in God's earth he can testify like this.

Exam. Reilly: Let's not get into Mr. Harrington's feeling mirror which has an interior slave mechanism by which you can adjust the angle of focus and discovered that it had been cunningly taped in place and that once I touched the interior control it fell out of focus and out of control. In other words, I inferred that there had been some substantial impact on this mirror completely disrupting these interior mechanical controls and the mirror was basically inoperative it terms of its function which was an adjustable function so that my wife could use it and I could use the same facility.

My wife communicated with AAACon, not retaining a copy of her correspondence, I believe she wrote in pen, in the month of September and received back a standard form document dated October 6 and signed by Bob Maxwell of the Claims Department informing us that they had contacted our insurance company and it was determined that the damage to the car was caused by operation failure and furthermore determined there was no negligence on the part of the driver.

Naturally I was unhappy with that revelation, particularly since I could not for one moment conceive of how they could have conducted an investigation of the incident, nobody having come to examine the mirror or having asked for further details or for any invoices on repairs or anything of that nature.

So my wife at my request wrote again. Sometime later, I frankly don't know exactly when she did write, it was likely in the month of November or December--

point, "and the car owner's duty of inspection on delivery in the absence of additional facts, all claims must be declined."

As it turns out, when I delivered the car, I do not recall whether I received a copy of the bill of lading. In any event, there is a copy of a bill of lading which I do have which I haven't signed dated August the 20th, 1970. In fact, it wasn't signed by anobody except the driver. My wife did sign a copy of the bill of lading when she received the automobile on the 27th day of August. She signed it in the wrong place, pickup in the above condition is noted, rather than delivery of condition. Well, having received no satisfaction in this incident, at some point in the future I contacted the Commission, as well as other government agencies.

Q Did you press the matter with triple ACon at that time?

A Well, yes, on January 25, 1971 I did write a letter to Bob Maxwell at triple ACon specifying most of the facts and demanding payment of what it would cost to repair the mirror. I stated that it was $28.80. Subsequently we got it repaired and it was closer to $25.00.

Q Mr. Posen, if I may, I would like to have you identify a photocopy of that document as being a photocopy of a letter to which you have just referred?

A It appears to be, sir.

Mr. Browning: May I have this marked for identification, A No, I don't believe so.

Q As a matter of fact, sir, isn't it true that in the type of mirror that you described the mirror divice is shieldded from the front and the sides by the casing and the mirror moves within this casing?

A That's correct.

Q Now, what makes you then say that this mirror received an impact which broke something that controlled the movement of the mirror inside the door mechanism, and all of this is inside the door now, isn't it?

A No, I don't believe it's inside the door. It may have been inside the casing which is exterior to the door.

Q Well, now, do you know where this so-called break in the linkage was?

A No, I don't know.

Q Then it might have been within the door?

A It might have been within the door.

Q Or it might have been within the casing?

A Might have been within the casing.

Q And both of those are metal?

A And indeed it might have been between the actual lever inside the door and the mechanism running to the mirror.

And in fact any impact might have been as a result of an impact on the interior lever.

Q Was there any indication that any part of the interior of the door was bent, broken or ripped?

A No.

Q Well now, what then leads you to a conclusion that there was an impact that caused this situation?

A I infer from the fact that the mirror was operating when I delivered the car and was not operating when the car was received.. Something happened between the time of delivery and receipt.

And I infer further from the fact that the mirror was taped in a means not easy to observe a visual examination of the mirror.

Q How long after the car was delivered did you say that this was noticed?

A I would say it was noticed within 2 or 3 days.

Q Sir, since you had no occasion to move the mirror prior to 2 or 3 days after delivery, do you know when the mirror was moved before it was turned over to the Aaacon driver?

A I'm sorry.

Q Do you know when that mirror was moved by anyone who might have used your car prior to the time that the Aaacon driver received the car?

A Yes. yes.

claim agent, suggested that all the information be submitted to him and he would try to have the claim paid.

"My letter of April 23 was sent to him containing all the information together with a copy of the repair bill.

"We regret that we must burden you with this additional correspondence but in view of the statements contained in the letter from Zola & Zola we felt constrained to refute the allegations made in that letter."

Q Is there any further correspondence between you and AAACon?

A Well, I waited until October 20th and I again wrote this letter to the Interstate Commerce Commission, to the attention of Mr. Tomany:

"Gentlemen, on June 9, 1970 I submitted to you information relating to a claim in the above captioned matter. I also submitted a further letter to you dated June 16, 1970. I have never received from you any written reply on this matter nor do I know what disposition, if any, was made relative to this item. Inasmuch as my claim resulted from their act of negligence in the handling of a transportation item, the business for which was solicited through public advertisements, and the manner in which the claim was handled by them indicated complete indifference to the public who used this company. I feel

Do you object or did I understand that you had an objection to any of these exhibits?

Mr. Browning: I move the admission of the exhibits.

Exam. Reilly: 62 through 67 are received.

The Witness: I would like to observe the fact I spoke to Mr. Maxwell several times, I was very indignant in the way in which I was treated. I described this letter and read it to them and told them I had the key. This was not withheld from them at any time. I had no purpose in withholding it.

Exam. Reilly: Well, I think that completes your testimony.

The Witness: Thank you very much.

(Witness excused.)

(Protestant's Exhibit No. 62 through 67, Witness Klausner, was received in evidence.)

Mr. Browning: May we take a five minute recess.

(Short recess.)

Exam. Reilly: Are you ready to proceed, Mr. Browning?

Mr. Browning: Yes, sir.

STEPHEN P. TOMANY

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) State your full name, please?

A Stephen P. Tommy.

Q By whom are you employed?

A The Interstate Commerce Commission, Bureau of Operations.

Q In what capacity?

A Supervisory, Transportation Specialist.

Q Where is your headquarters, Mr. Tommy?

A 26 Federal Plaza, New York, New York.

Q Are you assigned to any particular territory by the Commission?

A Parts of Manhattan, Westchester and Rockland Counties.

Q Is AAACon one of the common carriers within your territory?

A Yes, sir.

Q Have you attended the hearings this week?

A I have been in the hearing rooms Monday, Tuesday, today.

Q And have you heard the testimony of the witnesses?

A Yes, sir.

Not all of them.

Q How many have you heard, would you estimate?

A About 4 or 5.

Q If the Commission in the New York office were to receive a complaint, an informal complaint in writing or by telephone relating to AAACon's service, would you be the one who is assigned to handle it?

A Yes, sir.

Q And in fact have you received such complaints in the past?

A Yes, sir.

Q And have you handled those complaints?

A Yes, sir.

Q Now, by handling the complaints, what do you mean specifically?

A Why, I analyse the complaint and I send the complaint to AAACon, ask them for an explanation of the complaint and the reasons for the complaint, if it be a claim or excess mileage or damage to cars, or the car missing period.

Q Then what do you do after that, when you receive it and analyse it?

A Well, Mr. Ralph Zola usually answers my complaints.

Q In other words, you write AAACon, do you?

A Yes, sir.

I write AAACon, request they investigate the matter and ask them to send me an answer and an answer to the client that is involved.

Q Do you keep a record or do you keep all this correspondence in your files?

A That becomes part of the New York Commission files.

Q You do this in the regular course of your business, is that right?

A Yes, sir.

Q Now, let me ask you this, did I ask you to examine your files with respect to the complaints received about AAACon?

A Yes, sir.

Q What files did you examine, for what period of time?

A Well, I did really examine all the files and I selected those files from 1970 and '71. Then I selected certain ones from May or April of this year forward to date.

Q In other words, you examined your complaint file or the compalint files of the Commission in the Complaint Office for the years 1970 and '71?

A Yes, sir, part of 1969, also.

Q And did I ask you to pick out from those complaints the complaints that were of the same nature as the testimony that you've heard this week?

A Yes, sir.

Q And did you do it?

A Yes, sir.

Q And can you tell us, please, how many complaints did the Commission's office in New York receive in the years

1970 and 1971 up to the present time of the same nature as the complaints about which you heard testimony?

Mr. Kiel: I object to the question. It's indefinite. I don't understand what is meant by the same nature. Perhaps the witness can indicate--

Q All right. What claims did you single out?

Mr. Kiel: Not claims, complaints.

Q Complaints.

A Those complaints concerning claims, damages to the vehicles, excess mileage on the vehicles, cars lost, cars never delivered.

Q Of that type of complaint, how many did the office here receive in the year 1970 and '71 up to the present time?

A I'd estimate between a 100 and a 125.

Q And did you examine all those complaints?

A Yes, sir.

Q All right.

Do you have here in the hearing room a representative numberof such complaints?

A I have approximately 10 complaints here, recent complaints.

Q How recent, you mean how recent?

A From April or May to the present time.

Q Would you please tell us the sum and substance of each of those 10 complaints at this time?

Mr. Kiel: If your Honor please, I object to that type of a question.

It's too general, and also it may or may not be within the scope of the information that we've been given and in any event, it would be hearsay.

And further, before any testimony about any complaints and any files of the Commission are concerned where a witness is called, I have a right and I ask for that right to examine the files.

Mr. Browning: Yes. May I develop it a little bit further?

Exam. Reilly: Yes.

Q Do you have the files available here?

A Yes, I have all the files from the years 1970 and '71, and I have the originals of these--these are the original files.

We have photostats of them.

Q You have photostats of them here. And those are the originals that you have at the witness table, is that right?

A Yes, sir.

Q All right.

Would you permit Counsel for the respondent here to examine those documents?

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A Yes, sir.

Mr. Browning: Mr. Examiner, I submit at this time if they would like a little time to examine those I have no objection to it before he testifies about them.

Exam. Reilly: Does Counsel desire time to examine the original documents?

Mr. Kiel: I do. I don't know how long it will take. I don't know how many papers and what time it will take.

Exam. Reilly: Well, it's new quarter past 11. It certainly is going to take you a half hour I would assume to look at these documents?

Mr. Kiel: I wouldn't know. I would expect it might take considerably longer if it's a packet of papers that has to be read and analysed.

Mr. Browning: Let me say this, Mr. Examiner. These involve complaints about which AAACon has notice.

Exam. Reilly: I would assume--

Mr. Kiel: Did you notify us.

Exam. Reilly: I would assume in everyone of these cases there has been a communication, at least one communication addressed to AAACon.

Is that true, Mr. Tomany?

The Witness: Yes, sir, Mr. Examiner.

Mr. Kiel: Mr. Examiner, that may be but we have no

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way of knowing that this type of information would be forth coming. Counsel did not notify us about this. We asked him particularly to let us know complete details at the early part of this hearing and I read from that letter the request that we made and the fact that we were told that there was no additional information. They gave us copies of some delivery receipts which I was told was everything they had and it was everything that would be used in connection with this proceeding.

Now, we are brought face to face with a situation that we did not expect and I say that I'm surprised and I don't know that I will actually be prepared from just having the files of Mr. Tomany to go forward.

I would like the opportunity of collecting my files and analysing the situations and the conditions and the facts in those files so that I can properly understand what's happening and protect my client at the same time.

Mr. Browning: Mr. Examiner, we made it very clear in our original letter to him tht we intend to bring the record up-to-date as of the time of the hearing and submit evidence relating to complaints of the same nature up to the time of the hearing from the date of my letter.

Exam. Reilly: Well, I don't know how you can allege surprise, Mr. Kiel. You knew that the nature of this proceeding was a complaint proceeding.

Your files reflect some communications relating to every instance which Mr. Tomany is prepared to testify to.

Ordinary prudence I think would dictate that you should have made prior to this time a search of your files.

Mr. Kiel: Mr. Examiner, the purpose of the Administrative Procedure Act is to permit Counsel to be aware of what is going to be brought up. We made a request on Mr. Browning and he supplied us with information concerning matters and details that would be brought up.

We have made the search. There are boxes of records in this hearing room. They have been analysed and they are and were used in connection with the examination of the witnesses who were called. We analysed 60 files in order to be in a position to examine the witnesses who were here. They are only a small fraction of this.

We were given 2 groups, one with respect to the question of claims handling and the second with respect to the issue of dealer deliveries.

We have analysed all of those records. We have examined them. We have investigated them. We have secured statements from the people that were involved, some of whom are in this area and some of whom are not in the area and we are prepared to deal with the information that Mr. Browning will develop.

But now if I am faced with a notice from Mr. Browning that this is everything and now I am faced with discussions concerning a 100 to a 125 other matters and 10 of which are going to be brought out here I would assume, I have a need to have proper opportunity to develop my facts so that I can examine properly. Otherwise, I submit that I will be precluded from protecting my client and the due process will be withheld from me.

And I would suggest, Mr. Examiner, that we should give some thought to the fact that this is new matter and we should properly have been notified of it. And as I think about it sitting here, I feel more and more unable to cope with the fact that we are being inundated with material which was withheld from us and now is going to be attempted to be used. And I feel that under the circumstances, unless I'm given proper time not only to see these documents but to develop the rest of the information from my records that I will not be able to properly represent my client.

Mr. Browning: Mr. Examiner, we haven't withheld anything from Mr. Kiel or from his client. His client has received correspondence for each--in connection with each of these complaints about which Mr. Tommy is going to testify. Some of these complaints are very current, ones that we have very recently received in the New York office. We told Mr. Kiel in our letter that we intended to do this. I don't think the Commission should wear blinders in this matter and I think that it is very important, in fact it's one of the most significant things in this hearing to bring the matter up-to-date, to see what their current practices are.

Mr. Kiel: Mr. Examiner--

Exam. Reilly: We are not accomplishing anything, Mr. Kiel.

I am going to give you a recess from now until 1:30. That gives you 2 hours to look at these documents.

Mr. Kiel: Mr. Examiner, thank you.

I don't know whether I will be finished but when the time comes I will be prepared to make a further statement before I proceed.

Exam. Reilly: All right.

We are in recess.

(Discussion off the record.)

Exam. Reilly: Back on the record.

Mr. Kiel: Mr. Examiner, after the 10 or so files were handed to me, Mr. Walker indicated that these are representative of approximately a 125 documents in the room and that the files that I was given would be indicated as being representative and that I was welcome to look at the balance of the files which I must of necessity do because I will not be able to know otherwise.

And under the circumstances, I will not be able to by any possibility examine them in the time allotted and I don't know whether I will be able to examine them in 1, or 2, or 3 days.

And at this point I would think that the Examiner perhaps might want to make some determination of where we are going and how we are going.

Mr. Browning: Mr. Examiner, I submit it won't take him that long to get through these files in the first place.

Exam. Reilly: I simply believe that you are overstating your case, Mr. Kiel and we are going to be back here at 1:30. You are talking about analysis. You know what you have there. You have 10 simple--10 cases, I don't say they are simple. I am withdrawing that.

And you certainly can go through those files and determine whether or not you believe that they are representative.

So we will be back here at 1:30.

(Whereupon, at 11:30 o'clock a.m., a luncheon recess was taken until 1:30 o'clock p.m.)

Q And do you recall what, if any, documents you might have signed at that time when you made the contract for the transportation of your automobile?

A Yes.

There was a form they sent out and which they have a check list on it and destinations, amount paid, amount received prior to and the amount received at destination, New York.

Q Is that the bill of lading?

Do you have a copy of it there?

A Yes.

Q Is that what it says at the top?

A Bill of lading agreement, yes.

Q Did you read all the print in that bill of lading before you signed it?

A Yes.

Q Now, what happened after you entered into this bill of lading contract with them?

A Beg pardon?

Q What occurred after youentered into this bill of lading contract, did they ship your car?

A Yes. I will start with the beginning of it.

This car was an award given to me by a sports magazine as the most valuable player. I received the car the latter part of January, the 21st of January. And a month

Q You used that in order to call the St. Petersburg office?

A Yes.

Q I see.

And then you talked to somebody in that office?

A That's right.

Q And they told you again what?

A To go on and pay the driver, that he was not responsible, he delivered the car, and he would take it up, he would, you know, see that my car was looked after.

Q All right, sir.

What happened after that?

A Well, nothing exactly happened. I called them back. I sent a letter from my office stationery in Atlanta and they told me to contact my insurance company.

Q No.

I meant to say, did you pay the driver after tht?

A Yes, I paid the driver. I gave him a check and he said he couldn't get it cashed because he didn't have the proper identification.

So I went down to the drug store and got it cashed for him and gave him the money.

Q Okay. Then what happened again?

A And then we got in touch with AAACon again and they referred me to my insurance company.

Q I see.

A And with a note saying that, "upon paying the $50 dollar destination fee or return," or whatever it is, whatever it's called, "that they were no longer responsible, that I received the car as is".

Q I see.

A After that the car was constantly giving me problems and causing me to be late to work, to and from, so I subsquently had to trade the automobile.

Q I see.

Did you get it repaired, though?

A Yes, it was repaired. It was never the same. It was a brand new automobile. I don't think it had 3-- or 2,000 miles on it at the time.

Q I would like to have you identify a couple of things, Mr. Clendenon, if I may.

Is that a photocopy of the document which you have referred to as the bill of lading which you signed?

A Yes, it is.

Mr. Browning: I would like to have this marked for identification, Mr. Examiner.

Exam. Reilly: AAACon bill of lading E1520 marked for identification as Exhibit 68.

(Protestant's Exhibit No. 68, [illegible] marked for identification.)

under warranty?

A It certainly was.

Q And did the repairs to the car cost you anything?

Mr. Browning: I object as being irrelevant?

A Yes, I can say it cost me something, not necessarily the repairs per se but I had the car towed in 4 times.

Mr. Browning: I withdraw the objection.

Q You had the car towed from your home in Brooklyn?

A No.

Q To the Dodge Company, wasn't that correct?

A Yes.

Q And then they fixed it under warranty?

A Supposedly, yes.

Q And then did the gears go again?

A Constantly. They had difficulty with that car ever since that.

The only way they could have probably would have been entirely new motor or engine or transmission.

Q Did the Dodge people ever straighten that matter out so that the car operated--

A After the fourth time, after I was fined approximately $400 in fines being late on my job, I decided to get rid of the car because I thought this is my obligation to my ball club.

Q You knew that there are some cars that are referred to as lemons and that no matter what you seem to do they keep breaking down again?

A Well, it was certainly a lemon after I received it back from AAACon.

Q Mr. Clendenon, with respect to your testimony you indicated that after you called the Dodge people they said, "Perhaps the problem with the gears was due to one or another thing" and in each instance when you explained what was told to you you indicated that the man at the Dodge Company indicated that perhaps it was due to this cause.

As a matter of fact, sir, he was not able to assure you that he knew what the cause was of the breakdown of the gear system?

A I don't know if as a matter fact he knew. All I know is what he told me, this is the probable cause.

Q Will you tell me, do you have any record or recollection with you, record with you or recollection of the man with whom you spoke in St. Petersburg?

You first said the name of Bob Maxwell and then said you didn't know the man's name. Do you have any recollection?

A No, I really don't. I can perhaps identify the person because I did meet him on two occasions because we had a problem getting my car back from Colonial Dodge.

Q But you indicated it wasn't Mr. Maxwell, somebody in St. Petersburg?

A The agent which I dealt with, yes.

Q You were aware tht Mr. Maxwell was one who was attempting to handle your complaint?

A Mr. Maxwell knew of this.

Q Your Letter doesn't indicate it?

A Indicate what?

Q Your conversation--

A If he knew of it I didn't see why I should include it.

Q Did you ever send a compalint or refer a claim to AAACon with respect to the amount of money that you thought you were entitled to as a result of the failure of your gear system to work properly when the car was turned over to you?

A I had talked to him, as Mr. Maxwell informed me, I talked to my insurance agent and the claim was assigned to Miss Nolan and she said that they would look after it and I later called her back and told her, don't, because I'm going to get rid of the car.

This car is causing me too many problems.

Q Then your purpose in being here is to tell us that when your car was being transported something happened to the gear system, isn't that so?

Mr. Browning: Mr. Examiner, I object to the question.

A I just want to say that I didn't feel that many of us use, I am in National League now, use AAACon because it was convenient in St. Petersburg and some of the guys had problems but didn't do anything about them. And I was one of them. I was very dissatisfied with the way they handled the entire situation and the whole thing is to tell me the fellow and then I pay him and then later on I receive a P.S. telling me since I had paid the driver that they are no longer responsible.

Q Did you ever tell them what you thought they owed you for whatever damages you suffered?

A I told Mr. Maxwell he could contact Mr. Red Baily at Ebbets Field Dodge and find out about the cost of repairs, those things which were not under warranty.

Q Mr. Clendenon, your obligation was in writing to notify the carrier of the amount of your damages so that they an act upon it.

Mr. Browning: Mr. Examiner, is that a statement or a question?

Mr. Kiel: That is a statement and I will follow it with a question.

Q Did you ever do that?

A No, I didn't.

Mr. Kiel: Thank you.

June or at least approximately from the 1st of June up to the present time?

A Sir, it was about May to the present time.

Q May to the present time, did I ask you to do that?

A Yes, sir.

Q And did you examine your files from May until the present time?

A Yes, sir.

Q And how many complaints did you examine in those files?

A Approximately 40.

Q And did you select a certain number of those complaints as being examples?

A Yes, sir.

Q What was the process of your selection?

What was the basis of your selection, Mr. Tomany?

A I just went through them and picked them out at random.

Q You picked 10 at random, is that correct?

A Yes.

Mr. Browning: Mr. Examiner, May I approach the witness?

Q Mr. Tomany, I hand you what are photocopies of what I believe you have in front of you.

Would you check these photocopies and see if these are photocopies of the 10 examples that you selected,

PROCEEDINGS

Exam. Reilly: On the record.

Will you call your witness, Mr. Kiel.

JOHN JOSEPH SORACE

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) State your full name, please?

A John Joseph Sorace.

Q Please give your residence?

A 44 Catherine Street, East Northport.

That is in Long Island.

Q Would you please tell us the date of your birth?

A August 31, 1948.

Q Are you a high school graduate?

A Yes, I am.

Q Did you attend college?

A No, I didn't.

Q What did you do when you left high school?

A As soon as I left high school I had the summer off and I joined the Navy.

Q And were you discharged from the Navy?

A Yes, I was.

Q Was it an honorable discharge?

A Yes, it was.

Q After you were discharged from the Navy, what did

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you do?

A I worked for Avis Rent A Car.

Q Briefly tell us what you did.

A Well, it involved servicing the cars as far as washing and vacuuming them out, getting them ready for service, delivering the cars, picking them up, and that's about it I guess.

Q What else did you do?

Did you work for anybody else?

A After Avis I went to California.

Q Did you ever assist your father in his job?

A Yes, I did.

Q And what type of an occupation does your father have?

A He drives a truck for Metropolitan News Company in downtown Manhattan.

Q Did you ever learn how to operate trucks as well as automobiles?

A Yes. I have a Class III chauffeur license.

Q In the State of New York?

A Yes.

Q And what does a Class III chauffeur license in the State of New York permit you to do?

A Permits me to drive vehicles over 18,000 pounds.

Q Do you have to take a special test to get that type of license?

A Yes, I did.

Q And do you have to have a regular driver's license before you can get that license?

A I'm not familiar with that law. I don't know.

I had one before I had the chauffeur license.

Q I see.

In any event, did you have the chauffeur license when you were--before you went to California?

A Yes, I did.

Q Did you on/or before December 17 undertake to drive an automobile for AAACon Auto Transport from Los Angeles, California, to Reistertown, Maryland?

A Yes, I did.

Q You remember the situation?

A Yes.

Q At the close of that--by the way, what is your present employment?

A Presently I am unemployed.

Q You are unemployed?

A Yes.

Q With respect to that situation, did you receive a communication from a Mr. Maxwell of AAACon asking for information concerning the conditions that existed and what happened during your trip east with the automobile?

A I had spoke to a man from AAACon. I don't remember his name.

Q And did he ask you to write a letter?

A Yes, he did.

Q And did you?

A Yes, I did.

Q I show you a piece of paper and ask you if that is your letter, to AAACon Auto Transport?

A Yes.

Q Is that your signature at the bottom?

A Yes.

Mr. Browning: May I see it.

Mr. Kiel: May I substitute a Xerox copy for the record?

Exam. Reilly: Yes.

Did you want this marked, Mr. Kiel?

Mr. Kiel: Yes, please mark it for identification.

Exam. Reilly: Letter of March 13, 1970, to AAACon Auto Transport from John Joseph Sorace marked for identification Exhibit 82.

(Applicant-Respondent's Exhibit No. 82, Witness Sorace, was marked for identification.)

Mr. Kiel: May I ask that it be received in evidence?

Exam. Reilly: Do you have objection, Mr. Browning?

Mr. Browning: Well, sir--

Exam. Reilly: Do you want to--

Mr. Browning: I object to it right now.

I think upon the completion of his testimony perhaps.

Exam. Reilly: I will withhold ruling.

Q (By Mr. Kiel) I show you a document which is marked Exhibit 28 in this proceeding. It's an AAACon bill of lading, and down in the lower left-hand corner appears a signature with your name. is that your signature?

A Yes, it is.

Q Do you remember signing such a document?

A Yes.

Q There is another signature near yours. Did you ever see the person who signed that paper?

A No, I didn't.

This was already signed when I picked up the car.

I picked up the paper from the agency. It was already signed. I never met the person who signed it.

Q Now, Mr. Sorace, the date shown on here is 12-17-69. Do you remember writing that date down?

A I can't say I remember writing it down but it might be my handwriting.

Q Now, did you on/or before that date undertake to drive the Volkswagen sedan which is shown on Exhibit 28 east from Los Angeles to Reistertown, Maryland?

A Yes.

Q Will you tell us the route that you took and how you were traveling?

A I went north. We were going to take the northern route home across Montana because we'd taken the southern route on the way over. So we proceeded north, went north through California and got to northern California. We stopped for gas.

We were talking to the proprietor of the gas station. He says that there was some heavy snowfalls east of there and said it would be best for us to go back down and take Route 66 over which we did, proceed back down through California, through Death Valley Junction and we were heading over towards Las Vegas taking Route 66 when I heard the noise in the engine. I pulled over and stopped the car. And then went back to the gas station. I hitched back to Death Valley Junction. And the guy that owns Death Valley Junction, picked me up, brought me back to the car, towed the car back to the gas station, looked it over.

The next morning he told us that he couldn't repair it. He thinks there was a broken cam shaft. So he would have to tow us into Las Vegas where the necessary repairs would have to be made.

Q What did you do?

A I called the owner.

Q And were arrangements made to have the car towed into a garage?

A Yes. It was.

He sent me a money order for a $125 for the towing expense.

Q Do you remember whether you talked with a man or a woman?

A I talked with a man. I think I talked with a woman also. I'm not sure. I remember talking to the man.

Q Now, there is in this proceeding a document which I am showing you now. It's Exhibit 29, and it has on the top of it imprinted "Sunland Motors, Las Vegas, Nevada."

Do you recognize the name of that company?

A It's the company we had the car towed to.

Q Now, in the lower center of that first page is the signature with your name.

Did you do that?

A Yes, I did.

Q Can you tell us what the paper Exhibit 29--

Mr. Kiel: Strike that.

Q Before you signed it, did you have a conversation with the owner or the proprietor or some employee of that company?

A Yes, I did.

Q Can you tell us what that was?

A I told him we were having problems with the car and I asked him to give me a estimate on it and he told me to sign this paper which was blank at the time and I thought I was signing a release for an estimate.

When I went back the next day the repairs were already made and I found this filled out for $429 on the bottom of it.

Q You say this--

A This is Exhibit--

Q This is Exhibit 29?

A Yes.

Q What did you do then?

A I called the owner and told him what happened.

Q Was it him you spoke with?

A Yes, it was.

Q What happened then?

A Well, he told me to--I believe I had to call him the next day again and I called him from Las Vegas and he told me to leave the car there.

Q Were you given instructions that you were not to make or have repairs made for more than $20 without getting prior instructions from the owner?

Mr. Browning: Objection.

That's a grossly leading question.

Exam. Reilly: Rephrase your question.

Q Were you given any instructions before you left with respect to repairing or fixing the automobile and what should or should not be done?

A Yes, I knew if there was an excessive amount of repairs to be done that I would first have to get the concent of the owner.

Q If you realized that you were signing the work order and mechanic's lien at the same time for this repair, would you have done it?

Mr. Browning: Objection, Mr. Examiner.

He signed the document. That's been established and what may have been his mental processes or might be now in retrospect has no bearing in this matter.

Exam. Reilly: Well, he has already stated what he did and what he believed to be the situation.

Mr. Browning: It's repetitious, Mr. Examiner.

Exam. Reilly: So the objection is sustained.

Q After you spoke with the gentleman that you referred to as the owner--by the way, how did you know where to call the owner?

A I believe it was on the piece of paper I had.

Q I see.

In any event, you called the owner and after this--you had this repair bill for $429 shown to you, how soon after did you callthe owner?

A I called him right from the dealer as soon as the guy gave me the paper.

Q What happened then?

A I believe he told me that he had to look into it or something like that.

That's when I had to call him the next day. I called him the next day from Las Vegas.

Q What happened then?

A He told me I would have to leave the car there. There was nothing else I could do.

Q Did you then manage to get home some other way?

A Yes, I did.

Q By the way, how did you get west from home out to California, did you drive a car?

A I drove for AAACon.

Q Were there any problems on that trip?

A None at all.

Q Did the owner or the gentleman you thought to be the owner tell you he wanted you to remain with the car or that you might leave the car, or did he give you any indication of what his wishes might be?

Mr. Browning: Objection.

I think that the question can be rephrased.

Mr. Kiel: I will rephrase it.

Q Did the gentleman that you spoke with give you any instructions of whether or not he wanted you to remain with the car?

A No, he told me to leave the car where it was and that he'd look into it.

Q Then, sir, will you tell me, did you on this trip from Los Angeles, which terminated at Death Valley Junction, go through Mexico?

A No.

Q Did you take any side trips or any other trips other than what you have told us?

A No.

Q Did you drive the car at excessive speeds and abuse the engine?

Mr. Browning: I object.

These are awfully leading questions.

Mr. Kiel: Mr. Examiner, we had a witness who testified--

Exam. Reilly: I know. This isn't what he is objecting to. He is objecting to the form of the questions.

Mr. Kiel: I can withdraw the question.

Q In what manner did you drive the car with respect to speeds?

Mr. Browning: I object.

I think the same objection applies to this question.

Exam. Reilly: Well, I'm going to let him answer the question.

A I drove the car normally.

Q Was there any indication before you got in the vicinity of Death Valley Junction that there was any problem with the mechanical operation of the vehicle?

A No, just on occasions going up through northern California there are a lot of hills and going up the hills I had to downshift naturally because the engine was a little sluggish, but I expected it from a Volkswagen. It is only a 4-cylinder engine.

Q Did you ever drive a Volkswagen?

A Yes. I own one now.

Q You own one now, is what you said?

A I own one now, yes.

Mr. Kiel: That's all I have.

Just wait one moment. The other gentleman would like to ask you some questions probably.

CROSS EXAMINATION

Q (By Mr. Browning) Mr. Sorace, you said you were in the Navy, served in the Navy?

A Yes.

Q How many years were you in the Navy?

A Approximately 4 years.

Q Approximately 4 years.

So you served out your entire hitch, one enlistment, is that correct?

A Yes.

Q When did you go in the Navy?

A September, 1965.

Q How old were you then?

A I was 17.

Q I see, and you served until when approximately?

A June of 1969.

Q June of 1969.

So from June of 1969 you had various jobs, is that correct, Mr. Sorace, until you drove the car here in question?

A I worked for Avis Rent A Car.

Q Avis Rent A Car.

In that capacity I believe you stated that you serviced the car, you vacuumed the cars, cleaned them, et cetera?

A Yes.

Q Did you drive any cars for Avis?

A Did I drive, yes, I drove everyday, day in, day out for Avis as well as part of my duties.

Q Did they have any Volkswagens?

A Yes, they do.

Q Did they then?

A Yes, that was one of my cars, the car I used to drive

Q Are you a mechanic also?

A No.

Q Have you worked on Volkswagens?

A I have worked on minor tune-ups on cars, not Volkswagens in particular.

Q Well, you were an experienced Volkswagen man at the time you picked up the car, would you say, at least a driver?

A I don't understand your question. What's a--

Q Were you an experienced driver of Volkswagens at the time you made the pickup?

A I have driven Volkswagesn before.

Q Had you ever driven Volkswagens in the mountains?

A Well, not like the Rockies I imagine, no.

Q You had driven one car for AAACon prior to the time you made this pickup.

Mr. Kiel: Objection. It's asked and answered.

Exam. Reilly: He is laying a foundation.

Mr. Browning: I am laying a foundation for the next question.

Q Is that correct?

A Yes.

Q How many cars had you driven for AAACon after you made the pickup of this car, this Volkswagen?

A After the Volkswagen?

of things.

Q All right.

What was the engine condition of this car when you picked it up?

A I found it to be just a little sluggish but I didn't think it was serious.

Q Well, how fast do you think you could go with the car?

A I had no--

Q What would be the maximum speed on the level?

A That I would drive the car?

Q Yes.

A I drove the car according to the speed limits. I wasn't in no hurry. I was taking a lot of pictures.

Q Did you make a lot of stops?

A Occasionally for gas and food and rest.

Q Okay.

Did you make any side trips to see any points of interest along the route?

A We went over the Hoover Dam. We stopped and took pictures. We didn't go out of our way to take any pictures, no.

Q This was kind of a sightseeing jaunt, wasn't it, for you and your friend?

A It was a vacation, yes, it was.

A Volkswagens are air cooled. They are not water cooled.

Q What does that mean?

A That means if it's during the day and it's hot and it's water cooled the water will boil over and will overheat the engine.

Volkswagens aren't water cooled. They are air cooled.

Q You think you can drive a Volkswagen even through mid-day in the desert country?

A As long as you don't go racing through at 80 miles an hour I imagine you could.

Q In any event, you had had no experience along that line, had you?

A No.

Q Did you inquire as to what temperatures you were liable to encounter before you went into Death Valley?

A I imagine--I have heard a lot about Death Valley being hot. Death Valley was warm, very warm.

Q Did you inquire before you went in how hot it was likely to get in mid-day?

A No.

Q What were you shooting for when you went down through Death Valley, what point were you heading for?

A For Las Vegas, to pick up 66.

Mr. Browning: I would like to approach the witness, Q In any event, when the car broke down you got a hold of a service station attendant, is that right?

A Yes, it was the only gas station in Death Valley Junction.

Q And you asked them to tow the car into Las Vegas?

A No, I didn't. I asked them to check it out. They brought the car back to their station.

Q I see.

A And they said they couldn't perform the repairs on it. He thinks it's a broken cam shaft. So I called the man I was talking to on the phone, maybe Miss Blake's father or somebody.

Q Did you call AAACon first?

A I called the owner first.

Q Called the owner first. In Maryland?

A Right.

Q Did you ever call AAACon before the car was repaired?

A Before the car was repaired?

Q Yes.

A No, I didn't.

Q You didn't call them at all?

A No. I didn't see the need to. I didn't authorize anybody to repair the car.

Mr. Browning: I move that be struck.

Exam. Reilly: I'm not going to strike it.

Q Okay.

A I don't remember.

Q Now, you stated when you signed Exhibit No. 29 it was in blank?

A This was blank, right.

Q There was nothing written here at all?

A There couldn't have been because they didn't do anything to the car yet.

Q Just a minute now. I'm asking you whether or not there was anything in writing?

A This was completely blank.

Q That was completely blank?

A Maybe his initial was up here some place. I really don't know. There was no surprises, there was no repairs, there was nothing on it.

Q You mean there wasn't even the name of Jean White on there?

A Not that I remember. I gave him the registration or the bill of lading.

I think it was the bill of lading. I didn't have the registration. And he probably got the name from that.

Q Well, Mr. Sorace, since this document states that you authorized the above repairs, why did yousign it in blank?

Q Now, when you came back in September you asked to see papers of Intercity, isn't that correct?

A Intercity and Allstate, that's correct.

They were both one and the same, and I also wanted to see--I wanted to specifically speak to the owner of Intercity.

Q If you wanted to speak to the owner of Intercity, you knew who the owner of Allstate was, didn't you?

A Oh, yes.

Q Mr. Horton?

A Yes.

Q And at that time you were advised that a K. J. Woodruff was the owner of Intercity?

A That's right.

Q And you go on and say at that time they were one and the same?

A Who, K. J. Woodruff?

Q No, the 2 companies, Intercity and Allstate?

A They were one and--they were in the same office.

Q That's what you meant?

A If that's what I said--they were in the same office.

They ultimately turned out to be owned by one and the same person.

Q What date did you go to the Bank of America?

A November 13th.

Q I'm sorry?

A November 13, 1970.

Q Did you ask whether the card that you were shown was for an active account?

A Oh, yes, absolutely.

Q And is it your statement that you were told that that account was active and open at that time?

A That's correct.

Q And you say Mr. Don W. Nelson of the Bank of America told you that was an open account at that date?

A Yes. It was open on August 31, 1970, the balance of $550.

Q Did you see who the name of the proprietors of that company?

A Yes, the owner was E. J. Horton.

Q That's what that record showed?

A E. J. Horton, D. B. A. Intercity Auto Delivery, as owner.

Q Were there other signatures on that account card?

A K. J. Woodruff was the authorized signature, but not the owner.

Q Was there a Tully on that card?

A Not according to my records that I copied down.

I think Tully is the manager of Woodruff, is that correct?

Q In any event, that name struck a bell or a chord in your recollection?

A I believe it might have been the manager, the so-called manager for K. J. Woodruff which Mr. Horton referred to.

I'm not certain.

Q As far as your notes show from that card, you found nothing to indicate that the Intercity company was owned by Mr. Tully and Woodruff?

A No.

Q Now, as I recall, on or about that September and October, 1970 meeting, you indicated that the Intercity recordswere not made available to you?

A Correct.

Q And that was the day that you stopped off at the bank I believe you said?

A Well, that was the day that--the day I stopped off at the bank I was refused the Intercity records because it was climed that it was not under--subject to our jurisdiction, so I wanted to see the Allstate records because I felt that that would show me, possibly might show me the true owner of Intercity was.

Q And had you--you indicated that you had spoken to the Zolas and that they had promised full cooperation?

A Yes, they were cooperative. There is no question on that point.

Q Whom did you speak to?

A I believe Ralph primarily.

No, I meant Paul. I am looking at Paul and saying Ralph.

Q Had you spoken to him personally?

A On the phone.

Q What did you say to him, what did you tell him?

A Well, the substance of the conversation was I could not get the records out of Mr. Horton that I wanted to see.

Q You mean the Allstate records?

A The Allstate records.

Q And what did he tell you?

A He promised cooperation. No question about it.

Q Were you in Horton's office when you made the call?

A No.

Q Did you ever call him back and tell him that you were having--

A We talked 2 or 3 times.

There was no--and when I finally did find out the--who the owner was, I didn't persist in seeing these records until such time as--in other words, I gave Mr. Horton some additional time and I didn't want to keep getting involved in phone calls to New York.

There is no question about Mr. Zola being cooperative and actually stating that if Horton didn't square away he would also throw him out of the organization, so I have no qualms with the Zolas.

Q Now, did you ever advise AAACon that you had found that Intercity--the Intercity--about the Intercity information you had found out at the bank?

A No.

Q Did you ever tell AAACon that there was any problem with respect to that in your mind?

A I don't know if I got into a discussion with it. I don't recall.

Q Do you recall meeting Mr. Ralph Zola?

A Yes.

Q In Mr. Horton's office on one of your trips?

A Yes, bumped into one another.

Q That was in December?

A In December I believe.

Q And at that time, do you remember in December, in 1970, when you met Mr. Ralph Zola at the office of Allstate, the agent of AAACon in Los Angeles, that there was a discussion between you to the effect, isn't it a coincidence that both of you happened to come out at the same day?

A Yes.

Q And do you recall Mr. Zola asking you if there was any problem with this operation that you should notify him so that he can take whatever steps are necessary?

A Well, he knew. If he hadn't known at that time, he knew about the records disappearing at that particular time.

Q But do you remember such conversation with him on that date?

A I did not make notes of the conversation I had with him.

Again, I say, there is no question about the Zolas being cooperative and if he said that to me I'm certain I would have taken cognizance of it.

But I haven't had anything to do with that particular agency since the completion of my investigation in November and since the records were lost, except when the so-called--supposedly stolen records were turned over to me this year.

Q With respect to Exhibit 83, these are dated November 17, 1970, there are 2 statements of 2 brothers, Joe Lee and Ron Lee?

A Yes.

Q Did they contact you?

A They contacted me.

Q And offered these statements?

A Yes.

Q Did you do anything to corroborate or check or verify any of the information contained in the statements?

A In how--

Q After--

A How would I have done that?

Q I don't know how you would have done it.

A I took their statements. I assume their statements to be true.

Q You have no reason to know whether or not they are true, do you?

A I don't think they want to perjure themselves.

Would have no reason to--

Q Maybe they did. You didn't put them under oath when they gave these statements?

A No, of course not. They promise that it's a true statement.

The first paragraph, no commitments, no promises have been made to them.

Q Is there any reason why you did not mention to Mr. Zola that this situation was going on, that he should be aware of it?

A I was going to let our attorneys handle that anyway that they saw fit.

discussed a day or two ago is here.

May we have minute to speak with him?

Exam. Reilly: Yes, we will declare a short recess.

(Short recess.)

GUY P. D. ARCHER

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) State your full name, please?

A Guy P.D. Archer.

Q Mr. Archer, would you give your home address, please?

A Yes, it's 400 Central Park West, New York, New York.

Q What is your occupation?

A Lawyer.

Q And do you practice in New York?

A Yes, I do.

Q What firm are you connected with?

A Marshall, Bradder, Greene, Allison and Tucker.

Q Did you in or about May of 1969 drive an automobile for AAACon Auto Transport?

A Yes, I did.

Q Did you apply for that at their New York office?

A Yes.

Q Do you remember where you transported the automobile?

A Yakima, Washington.

Q Do you remember the name of Harrington?

A Yes, I do.

Q Did that have anything to do with this movement, was it a Harrington movement, for Mr. Harrington, that is, the car, was it moved for him?

A Yes.

Q Did you meet a Michael B. Harrington in Yakima, Washington, when you delivered the car?

A Yes, I did.

Q His father, a Mr. B. W. Harrington, attorney, in Carteret, New Jersey, an attorney, testified in this proceeding, have you been so advised by me?

A Yes.

Q Mr. Harrington told us about some information that his son told him about that dealt with the conversation between his son and yourself.

And in so many words it was testified that you told Mr. Harrington's son that the car worked well until it got up to 80 or 90 miles an hour.

Did you tell Mr. Harrington's son that?

A Well, I think I told him that it worked fine except for the fact that the heater hose blew out in Nebraska and had to be replaced and we had to be towed, I believe it was Nebraska.

And I--I also described generally, you know, traveling across the country and also indicated to him that the car shimmied when--if you exceeded the speed limit, the car had a shimmy, a serious shimmy.

Q What speed limit are you talking about?

A Well, it varies.

Well, it was in the western states and it was, you know, in the 70's I'd say.

Q And when you first discovered that the car shimmied when it was in the 70's, did you travel at that speed--

A No.

Mr. Browning: Excuse me, I object to that question.

He said, when he exceeded the speed limit it shimmied.

Mr. Kiel: He didn't say that at all.

Mr. Browning: I would like to have it read back to see what he did say.

That was my impression.

MR. KIEL: Let the witness tell what he said or what he intended to say.

MR. Browining: That is my point. He didn't let the witness tell him.

Exam. Reilly: Do you want it read back, Mr. Browning?

Mr. Browning: No, I just object to the form of the question.

It's a leading question.

Q Would you repeat, again, sir, the business with respect to the shimmy and the speeds of the shimmy?

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A As I recall, the car could not be driven over about 70 miles an hour because it had a bad shimmy and that's what I told him.

Q I assume that you discovered that by going over 70 miles once?

A Yes, well, in the far west the speed limits go up to--I don't recall exactly but I believe they go above 70 miles an hour.

I think they are 75 or something.

Q Now, would you tell us, sir, did you indicate to Mr. Harrington's son that you went to Chicago?

A No.

Q Did you indicate to him that you went to Burbank?

A No.

Q Now, would you tell us, did you tell Mr. Harrington's son the cities that you had gone through and how you had traveled?

A Yes, I did.

Q Now, would you tell us what you told him and how you mapped the trip?

A Well, I went up to my parents to pick up my belongings, and they live near Catskill, New York.

Q From New York, heading west, how would you normally travel?

A As I recall, then I took the Thruway across the--across

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from Albany to Buffalo to Cleveland.

Q Let's start from New York.

How did you go from New York?

A You know, I usually would take Palisades to the Thruway to the Catskill exit and then it's--I don't remember, the roads have changed up there but it's like Route 212 or something, to Greenville, where my parents live.

Q How far is Greenville from the Catskill exit of the Thruway?

A About I'd say 12 miles.

Q And you drove from the Thruway exit to Greenville.

Did you take any other trips from the exit at Catskill or just to Greenville?

A Just to Greenville.

Q How long did you stay in Greenville?

A Well, as I recall, I picked up the car late afternoon, I drove up to my parents and spent the night and left the next morning.

Q Did you go back to Catskill?

A Yes, got back on the Thruway.

Q And went as far west as what?

A I believe I went to Buffalo and then down to Cleveland but I'm--

Q Did you go through Chicago, too?

A No.

Q What was the main route that you took through the western states?

A Well, it was Route 80. I took--from Cleveland we traveled across Illinois and then--

Q Would it help you to look at the map?

A Yes, Maybe I should.

Oh, I see where Cleveland is. Well, it just occurred to me that I suppose I did because I got--Cleveland, Route 80 goes through Chicago.

Q You went through Chicago?

A We didn't stop. We were just on the highway.

Q Were you traveling with another attorney friend of yours?

A Yes, who I picked up in Cleveland.

Q As far as your route west, what route did you take?

A We stayed on 80. We traveled straight through. We must have gone through Omaha and in Nebraska, it was North Platte, it was in that area that the heater hose blew out. That's 80.

Then we went through Cheyenne and Salt Lake, and then to the San Francisco area.

Q Now, who drove on that trip?

A I did.

Q Did your friend drive?

A No.

Q Now, with respect to the hose occurrence in Nebraska, would you tell us what happened?

A Well, it was during the day and I was driving and all of a sudden, you know, there was this steam coming out of the engine and we pulled over and the heater hose had split or, you know, burst or whatever and the water all drained out.

And so we took it--we tried to, oh, I forget, somehow we got to a garage and they brought us back and said that the car would have to be towed in and they towed it in to their garage and put in a new heater hose.

Q And filled the radiat[illegible]?

A And filled it up and we spent maybe an hour and then drove on.

Q Did you stop overnight in the San Francisco area?

A Yes, I did.

Q And at what town?

A Well, I dropped my friend off in Berkeley and I stayed in Palo Alto.

Q Are both of those in the vicinity of San Francisco?

A Yes.

Q Then where did you go?

A Then I drove to Portland where I stayed overnight or stayed at actually my father's cousin's house.

Q From there where did you go?

A Then to Yakima.

Q Do you remember the total number of days it took you for the entire trip from New York to Washington?

A Yes, it was about 8 days.

Q Did you take any trips off the route that you have described that you haven't told us about?

A No.

Q By the way, have you ever been in Burbank?

A No.

Q Beautiful Downtown Burbank?

A No. I've never been in southern California.

Q Would you tell us what happened when you turned over the car to young Mr. Harrington and before he signed the receipt for the car?

A Well, I arrived in Yakima in the afternoon and met his wife. He was out at this job and he returned, you know, early evening and we generally talked and I told him that the car was fine except for the heater hose problem and he--oh, there was a lawnmower and some other items in the trunk that I transported for the Harringtons and so he looked at that stuff and looked at the car and started it up or something and then signed the papers and I forget, I think I had to phone you people or something, or mailed the papers back. I forget--

Q Had you received driver's instructions before you left?

A Yes.

Q Did you wait for Mr. Harrington to come home from business?

A Yes.

Q And had you saved the piece of hose that had burst?

A Yes.

Q And was it given to him?

A Yes, I kept it in the trunk.

Mr. Kiel: I have nothing further.

CROSS EXAMINATION

Q (By Mr. Browning) Mr. Archer, talking about the speed limits and so forth on your driving, isn't it true you exceeded the speed limits at time during your trip?

A No, I wouldn't say that's true.

You know, when you are in the desert, when you are driving on the desert, as I recall there may be no posted speed limits. And as I said, the car was undriveable at over in the 70's, you couldn't really drive it. It had a serious shimmy.

Q You couldn't drive it in excess of 79 miles an hour?

A Well, I would say more like 72 miles an hour.

Exam. Reilly: Back on the record.

Mr. Kiel: Mr. Examiner, in view of the testimony of Mr. Archer, when he testified with respect to alleged conversations, I asked with Mr. Harrington Jr., I asked therefore that the hearsay which is the subject of Exhibit 59 in evidence and the testimony related to that be stricken as being incorrect and in addition to being hearsay.

Exam. Reilly: Did you say that was incorrect?

Mr. Kiel: Yes, sir.

Exam. Reilly: You are assuming a great deal, aren't you?

Mr. Kiel: Yes, sir.

Exam. Reilly: I'm not going to strike.

Mr. Kiel: I also make the motion at this time that Exhibits 32, 33, 34 and 36, and related testimony of witness Jean Blake White, as it deals with information given to her by some person or persons named and unnamed be stricken inasmuch as we have the tesimony of the witness, Mr. Sorace, who indicated what the facts actually were.

Mr. Browning: I certainly oppose that.

Exam. Reilly: Again you are assuming against the powers you have to assume.

You assume your witness tells the truth and nobody else does?

Mr. Kiel: No.

The testimony that Miss White gave related in these exhibits only deal with information she was given. I am not questioning that she told it correctly.

Exam. Reilly: I am not going to strike any of the exhibits of any of the testimony with respect to those exhibits.

(Discussion off the record.)

Exam. Reilly: The hearing is adjourned until tomorrow morning at 9:30.

(Whereupon, at 4:30 p.m., Thursday, October 21, 1971, the hearing was adjourned until 9:30, Friday, October 22, 1971.)

here.

Exam. Reilly: We'll settle that when we come to it.

CROSS EXAMINATION

Q (By Mr. Kiel) Mr. Tomany, you indicated that you had received a 100 or a 125 complaints in the period 1970, '71 at one point and then you made available a number of files and they covered the periods 1969, '70 and '71.

Would it be correct that the 100 to a 125 complaints files that you brought to the hearing covered the period 1969, 1970 and 1971?

A Not all of 1969. There are certain ones that are still open waiting for further reply from AAACon.

Q Do you have any other--

You brought no others to the hearing room?

A No.

The procedure in our file is to destroy certain records after they are in the file a certain time.

Q Whatever there may be of them or if there were complaints, they are not in existence anymore?

A To the best of my knowledge, they are not.

Q Now, the procedures for these--let's start on the first one, the Exhibit 71, when papers come to your attention, they may be from the complainant or from a letter transmitted to you by some other representative of the Commission or by a public official or by anyone in fact, isn't that so?

A Yes, sir.

Q At that point do you start the file and keep the file in your possession?

A Yes, sir.

I immediately send out a letter to AAACon with a photostat of the complaint and I await a reply.

Q In the meantime, do you hold the file?

A Yes, sir.

I put it in my pending file.

Q When something comes in, do you insert the response?

A Yes, sir.

Q So that in all instances, you would be the person who would receive papers and put them in this file?

A Yes, sir.

Q They wouldn't go into the file room for someone to file papers?

A No, they go to me first and then to the file.

Q But they do go the the file room?

A Definitely, eventually.

Q Would that be after they are closed or before they are closed?

A It is after they are closed naturally.

Q In the meantime they are in your custody and you keep the file up?

A I keep the pending file.

Q Yes.

But you keep the entire file in your custody?

A Oh, surely.

Q You indicated that these 10 claims are examples of complaints.

Now, sir, will you not agree with me that they are not typical of all of the complaints?

A No, I will not agree with you, sir.

Q You say that they are typical of all the complaints?

A I picked out 40 files and I just pulled 10 out of them and that was it.

Q There was no attempt to make them typical?

A There wasn't any attempt whatsoever.

Q Now, you know, don't you, that for example there were documents in the file that you brought to the hearing room from AAACon's competitors, Auto Driveaway, complaining about the type of automobile that AAACon was transporting and the Commission interpreted the authority of AAACon and said they could handle that type of automobile?

You know there is that type of complaints in those files that you brought, don't you?

A That's more--that's a very recent complaint and I haven't even processed that yet.

Q Well, you know--

A By the way, I don't see it around.

Q You know there are others that were in those 125 files that you brought to the hearing room which indicates a response was sent by the Commission to Auto Driveaway that the carrier had proper authority?

A Yes, sir.

Q And you will agree with me that there are others from other competitors such as Insured, and so on?

A I imagine there are.

Q And they relate nothing to the matters involved in this proceeding?

Mr. Walker: Objection to that, your Honor. He can't answer that question as to whether they relate.

Exam. Reilly: Unless you ask him something specific, I don't think he can answer that question.

Q With respect to the files, isn't it true that there are a number of them from Auto Driveaway, intervenor here, complaining about the rates assessed and the response from Mr. Kempel indicating that the rates were checked and they were found to be proper?

Mr. Browning: I object on the grounds we have gone well beyond the 10 that we thought Mr. Kiel was going to restrict himself to and I object to any examination on the rest of them, on the grounds that we have picked out 10 of the last 40 recent complaints and that's all Mr. Tomany is on the witness stand for.

Mr. Kiel: Mr. Examiner, so the Commission--

Mr. Browning: We simply gave the number of the other complaints that have been received in the years 1970, 1971.

Mr. Kiel: So the Commission doesn't have a record which does not permit them to know what all of the facts are, I am just giving a general run down.

We have reason to believe from examination of the documents which Mr. Zola will cover that more than 75 of the approximately 125, and there aren't I don't believe a 125, but approximately a 100 complaints are not concerning anything that might reflect unfavorably on my client insofar as this proceeding is concerned.

When you hear numbers which seem to be high and find out the fact that we are just talking about files and not anything detrimental or adverse to my client, then we have a completely different picture and I think it's very, very important that we be permitted to explore this.

His testimony is just with respect to the general matter. Mr. Zola will go into specifically each of these other matters filed in the file.

Mr. Browning: Mr. Examiner, I object to any exploration beyond the 10 or beyond the 40 from which the 10 come.

Now, I understand that they mixed up the files so we can't locate the 40 from which the 10 were selected. But I object to any further testimony because Mr. Tomany has only been sponsored for the purpose of giving us 10 examples of recent complaints received by the Commission's New York office.

Mr. Kiel: Mr. Examiner, that's exactly it. They are not examples. They are not examples as Counsel is saying.

Exam. Reilly: I am not going to get all wound up in nomenclature.

I don't know what other word you could use instead of examples. To me "examples" seems a pretty good word.

Mr. Kiel: I believe there was a question pending before the long discussion by Mr. Kiel.

Exam. REilly: I am reluctant to let you go through all of the data relating to a 125 files.

If you came to certain general conclusions which may or may not be rebutted by Counsel for the Commission, this is all right but I am going to permit you to go through a protracted examination of the matters contained

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in a 125 files which are beyond the scope of what this witness in on the stand for, the purpose that he is on the stand.

Mr. Kiel: Mr. Examiner, I am going to deal with the 10. I am just setting the background for them.

Mr. Zola, as I said earlier, has made the examination and analysis and he would undertake to develop that.

Exam. Reilly: As I said, we'll cross the bridge when we come to meet Mr. Zola at the furthest abutment. At the moment, I don't want you to pursue the matter of a 125 files any further.

Mr. Kiel: Thank you.

Q (By Mr. Kiel) With respect to Exhibit 71 matter of Gilbert E. Bell, will you agree with me that in that situation, sir, that you received from Mr. Zola a letter dated August 30, 1970, which referred to not only the Gilbert E. Bell file, CI-55769, but others?

A Yes, I received this letter from Mr. Zola.

Q Now, I note that the CI number on Exhibit 71 is 55860.

A Mr. Bell's complaint came in 4 times.

Q The same complaint in the same matter?

A It was sent to the Washington office of the Commission. It was sent to the New York office of the Commission. I believe it was sent to a couple of other places, Consumer possible.

Mr. Browning: Mr. Examiner, I think we've already got into the record--Mr. Tomany has testified to the fact that we asked him to cull out of his files the most recent complaints, that is, the complaints received by the New York office in the period approximately May through the present time.

Exam. Reilly: And this 40 represents all of them so there is no selection with respect to the 40 at all.

Mr. R. Zola: Mr. Hearing Officer, Mr. Walker stated--

Exam. Reilly: We are not interested in what Mr. Walker stated.

Mr. R. Zola: All right.

I will get into it directly.

I would like to find out from the witness certain--

Exam. Reilly: I have two purposes in establishing this, We are going to recess this hearing at/or about noon, so that if you are going to take a great length of time, there is no sense in starting the examination.

In the second place, if I may anticipate what you are establishing, I think it's a matter better established through a stipulation if the parties can get together on a stipulation.

Mr. Walker: As I understand it, the sole purpose of cross--

Exam. Reilly: What he is trying to do is to get over the hump, the use of the word representative.

Mr. Browning: We didn't use that word. We said examples.

Exam. Reilly: He was just going to say that Mr. Walker did use it a half hourback and he did use the word.

I have attempted to stay away from the semantic question. To me these are examples and this is precisely the way they will be treated by me.

Mr. Browning: That's what we put them in for.

Exam. Reilly: I do not consider them representative.

Mr. Browning: No, sir, we don't.

Mr. R. Zola: Mr. Examiner, I will try to be as brief as possible but I think there are other matters that may be brought out during cross examination which will be of use to the Commission in the investigation of the method--

Exam. Reilly: Would you mind telling me. It can't be a secret now because it has to be divulged later.

What are these matters you are trying to establish?

Mr. R. Zola: I want to establish, Mr. Examiner, that of the alleged testimony to 40 files, that there are files that have been received in the last 6 months that are not within the 40 files.

I wish to further establish that there has been a pre-selection. I wish to further establish matters relating to the credibility of the witness and the authenticity of the documents and the weight the documents should be given by the Hearing Examiner and the Commission.

Exam. Reilly: Well, you are not going to do that in a half hour. It takes you 20 minutes to make your statement.

Mr. Browning: Mr. Examiner, I would like to point out that they mixed out the files. We don't know what 40 they are talking about. We have no way of identifying those 40. They put it in and integrated it with the rest of the files.

They mixed them up and we asked them not to do it. That's the reason we set those particular files aside and asked them to keep it that way.

Exam. Reilly: Well, this is my concern. It gets around to the point when it comes to Mr. Browning, he is going to state and I think with some foundation that he is not in a position at that moment to examine the witness.

Mr. R. Zola: Mr. Hearing Examiner, 2 days ago, late in the afternoon, Mr. Tomany was put on and at that time for the first time we were informed that these matters would be presented. I was told I would have overnight to examine them. I was given exactly one hour.

Now I believe that--

Exam. Reilly: Well--

Mr. R. Zola: I would like to finish this statement because I believe it is germane.

In the hour that I had that evening we were able to establish that some of the documents are missing from the files and that the files do not even reflect all of the documents received by the Commission.

Now we have tried as quickly as possible to assemble some kind of defense for cross examination.

Exam. Reilly: Would you mind stopping now.

Do you understand, sir, that what I am trying to do is to give you an opportunity to put on your case ad nauseum, at full length. I don't want to tell you at 12 o'clock you are out.

Mr. R. Zola: I see.

Mr. Browning: Mr. Examiner, as far as the one hour business is concerned, it's true we asked him to leave at 6 because we had to close the office at 6 o'clock. But we reopened the office at approximately 8:15 the next morning and Mr. Zola, to my knowledge, never showed up in the morning.

Exam. Reilly: Well, look, I don't think we have to go into that.

Mr. R. Zola: I am not going to go into that colloquy. Now that I understand your suggestion, Mr. Examiner, if this Tomany and these records we have selected will be made available, I will be happy to start my cross examination at the postponed date of the hearing.

Exam. Reilly: Well, my point is there is no sense initiating an examination which cannot be finished when the session ends.

Mr. Browning: I submit any examination on the rest of the 125 files would be meaningless and completely besides the point.

Now, I don't want to make those files available to the respondent down wherever we are going to go at the recessed hearing.

Exam. Reilly: This is precisely the point I was trying to say.

If he has these things, the pre-selectivity question, the question of missing documents, documents not included, representation that these are not representative, this is a thing that to me more properly should be subject to a stipulation between the parties because all it does is burden the record when in 2 sheets of paper you could resolve the total issues with respect to whatever questions they have in the matter of the documents which have been offered or will be offered in evidence and the documents which are referred to as the 100 or 125 complaints.

And that certainly could be done before a continued hearing and offered at that time.

Mr. R. Zola: Mr. Examiner , we would be happy to agree with your suggestion if we could have some time, a few minutes now before 12 with Mr. Browning, see if we can do that.

Exam. ReillY: Well, I don't think Mr. Browning has ever seen the 125 files.

Mr. Browning: I certainly haven't and we don't maintain that these 10 are representative of the 125.

Now, if that is the point and the purport of their stipulation, I would agree to that.

Mr. Kiel: The thing, Mr. Browning--

Mr. Browning: If we are going to go beyond that and go to everyone of these things and give the nature of each of the 125 files, I'm not going to do it.

Mr. Kiel: The point is there are a substantial numberoof files which are nothing more than inquiries to the Commission concerning "Can the carrier serve Arizona?" and the Commission's answer "Yes, they can."

This is not a complaint file but it is one of the so-called 125 files. There are many others like that, 75 in fact Mr. Zola says.

Exam. Reilly: I am sure if you point those out to

Mr. Browning he will agree that they are precisely what they say they are.

Mr. Browning: Can we just go off the record?

Exam. Reilly: Off the record.

(Discussion off the record.)

Exam. Reilly: Back on the record.

Are you ready to read the proposed stipulation, Mr. Browning?

Mr. Browning: Yes, sir.

The respondent and the Bureau of Enforcement has agreed on a stipulation, namely, that the New York office as of this date has received additional complaints involving excess mileage and damages to vehicles of the same general nature as was disclosed by the evidence presented by the witnesses who have heretofore appeared at the hearing. And by the New York office, we are referring to the New York office of the Interstate Commerce Commission.

Now, I move that Exhibits Nos. 71 through 80 be received in evidence.

Mr. Kiel: Mr. Examiner, I ask that as a result of the stipulation which was intended to cover this material that the documents not be received in evidence.

Exam. Reilly: The documents are not received in evidence and the evidence presented by Mr. Tomany with respect to the tendered exhibits is also stricken.

Do you agree to the stipulation?

Mr. Kiel: Yes. And I understand the striking of the evidence would leave then with respect to Mr. Tomany who he is and what his duties are at the Commission?

Exam. Reilly: Well, without reading all of the testimony, I don't really know.

Mr. Kiel: In any event, they don't have anything to do with the matter of--

Exam. Reilly: He has a lot of evidence in there about how he processes things and how he writes back and forth. !

Mr. Kiel: Yes, I understand, thank you.

(Protestant's Exhibits 71 through 80, Witness Tomany were rejected.)

Mr. Browning: The Bureau of Enforcement moves that the hearing at this time be recessed and continued in Miami, Florida for the convenience of witnesses that we intend to call there.

Exam. Reilly: We will recess the hearing to a time and place to be fixed by the Commission.

Mr. Kiel: Mr. Examiner, may I be heard, please?

Exam. Reilly: Yes.

Mr. Kiel: Mr. Examiner, I request the Commission to assign any further hearing in this matter at New York City, in the same city where the hearing began, for the

Auto-Trip-USA, Incorporated. We both have been admitted to practice.

Mr. Reilly: Are there any other appearances?

Mr. Coker: Mr. Examiner, my name is Dellon E. Coker, I am an attorney with the Regulatory Law Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C. 20310, appearing for the intervenor in the proceeding, the Department of Defense.

Mr. Reilly: Has your petition been granted?

Mr. Coker: Granted.

Mr. Reilly: Who appears for the protestants?

Mr. Johnson: If the Examiner please, my name is Daniel B. Johnson, 716 Perpetual Building, 1111 E. Street, N.W., Washington, D.C. I am an attorney at law admitted to practice before the Commisssion, appearing on behalf of the Auto Driveaway Company.

Mr. Reilly: Are there any other appearances?

(No response.)

Mr. Reilly: Let the record show no response.

Are there any preliminary matters?

Mr. Browning: Mr. Examiner, I have had a conversation with Mr. Coker of the Department of Defense and he indicated to me that he would like to proceed at this time and put on his witness so that they can return and therefore the Bureau of Enforcement yields to the Department of Defense for that

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purpose.

We will continue when he has put on his witness and is through with his presentation.

Mr. Reilly: All right.

Do you want to proceed, Mr. Coker?

Mr. Coker: Yes, sir. I would like to call General Wolfe, please, and ask that he be sworn.

WILLIAM R. WOLFE, JR.

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Coker) Would you please state your name?

A William R. Wolfe, Jr.

Q Are you a member of one of the military services?

A I am.

Q Would you state which one it is, please?

A The U.S. Army.

Q And is that an armed service of the Department of Defnese?

A Yes, sir.

Q Could you please state your rank?

A Brigadier general.

Q And what is your present assignment and position, General Wolfe?

A I am assigned to the Alaskan Command and I am the Chief of Staff of that Command.

Q Would you give the address of that command, please?

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Q Do you remember your first approximate date of the next contact with any other persons said to be employed or representing AAA Con?

A I exchanged numerous pieces of correspondence with personnel in the Washington office and they indicated that the whole matter had been turned over to the New York office.

Q Did you receive a telephone call from a Mr. Walter on or about the 21st of January regarding the location of your automobile?

A Yes, sir.

Q And what did Mr. Walter tell you at that time?

A He indicated that he had verified the report that I had made as to the location of the car, the garrage and its location and during the disucssion Mr. Walter stated he, meaning the driver, will never drive for anyone again, or words to that effect.

Q Did he indicate to you whether or not the driver had contacted him or the company in the interim between 29 December and 9 January?

A He indicated that the driver had contacted him.

Q Approximately what date?

A Prior to the 9th of January, after departure and prior to the 9th.

Q Did Mr. Walter give you any instructions as to what to do, what your next step would be with respect to contacts with his company?

A He indicated that he was prepared to continue shipment provided I had the car repaired.

Q Did he refer any further contacts to any particular person in the organization?

A Subsequently he referred any further contact to the New York office.

Q Now, going back to the 12th of November, can you state generally the condition of your car and also give details about its make and model, year, mileage at the time?

A It was a 1964 four-door Ford, with approximately 30 thousand miles, in good condition.

Q Do you remember an approximate mileage?

A Approximately 30 thousand miles.

Q Had you -- most of those miles areyou familiar with what happened to the car over that time period?

A It wasin my possession from the time it was new.

Q Did you do regular maintenance on that car during that time, have regular maintenance performed?

A Yes, sir.

Q Had you originally, prior to tendering your car had you had a periodic checkup or whatever?

A I had it completely checked out within three weeks before departure and the day I turned it over I checked it again by a mechanic, lube, oil changed, anti-freeze added for protection

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Q Yes, sir. So, when you became aware that the vehicle had become unfit to be driven any further then in Wall, South Dakota, -- I believe you indicated that you had been advised that repairs at that time would be approximately $110?

A This was the advice I received from your Seattle office.

Q Now, when you were advised that -- as you indicated that you were -- that the carrier was prepared to continue the transportation if it was put into proper operating condition; did you arrange or undertake to arrange to have the vehicle repaired so that it could be driven the balance of the way from South Dakota to Washington?

A Through contact with the garrage operator I determined the status of the vehicle --

Q Would you please answer my question?

Mr. Reilly: I think he is allowed a preliminary statement. He is going to give you an aswer.

Go ahead, General.

The Witness: The garrage operator indicatd that the vehicle had been driven while it was over heated to the point that several of the pistons had holes in them and would require a complete overhaul of the engine.

Q (By Mr. Kiel) Would you answer my question?

A Would you restate the question?

Q The question is did you arrange to have the car repaired?

A I did not because it -- I felt it was your responsibility.

Q I see.

Dispite the agreement that you signed indicated that this was going to be your responsibility you did nothing?

A I was never advised as to the mechanical defect involved. I was only advised as to the ultimate condition of the car.

Q Now, you were advised of the ultimate condition of the car and you never undertook to do anything -- as lawyers sometimes refer to as self help, that is, to have the car repaired?

A The mechanical defect did not cause the current condition of the car. The continued operation after the mechanical difficulty caused the problem with the car and I didn't feel that this was my responsibility.

Q So, as far as that was concerned you in effect decided that you would leave the car there an that's where it has been?

A I didn't put the car in the garrage.

Q I can appreciate that. But, if you spoke to Mr. Walter and he indicated to you that if you would arrange to have the repairs made at your expense that they would continue the transport of your automobile; isn't that so?

A Thatis correct.

Q But you determined that you didn't want to do that, for whatever reasons you have explained?

A I did not do that because I felt the damage was -- which

Q You received no report from him?

A I did not receive a report from him.

Q Had you made a request to have anybody from the legal assistance office contact AAA Con?

A I asked my staff Juge Advocate for advice as to how to proceedin this case after hearing from Mr. Browning which resulted from a great deal of correspondance which I had with the Interstate Commerce Commission to include the chairman, Mr. Toomany and others in an attempt to adjudicate this matter.

Q Did you in the course of your determination as to the alternatives which were available to you when you were transferred to Alaska, when considering trading in your automobile on a new one which you would buy in Seattle, did you get a price for the value of the used car as it was in Virginia before it was shipped?

A I did not because I did not desire to take a new car to Alaska.

Q You got no price from anyone for the value of your car if you were to sell it in Virginia?

A I only indicated that that was a course of action which I elected not to pursue.

Q But, you didn't get any prices for the sale of it?

A No.

Q Did you offer AAA Con to sell them your car in the condition that it was in when it wound up in the garage in South Dakota?

A Yes, I did. Because I thought that I would never get the car at the rate that it had taken it. It had been some 60 days from the time I had asked you to ship it and I still didn't have it. I saw that I had to purchase another car at that point. And, since your dirver had put it there I suggested that if you might decide to take the whole car.

Q Did you tell them how much money you wanted for the car?

A Not in dollars.

Q Do you know that in fact AAA Con has paid Cliff's for certain services performed in connection with the breakdown of your car in South Dakota?

A I am not aware of any.

Mr. Coker: Mr. Examiner, we might say the company can inform us, on the record or either off the record with respect to that. the general said that he wasn't aware of it.

Q (By Mr. Kiel) Sir, isn't it a fact that you advised AAA Con that if they would refund you the transportation, your transportation charges of $205 that you would take custody of the car in South Dakota and arrange to transport it yourself?

A I don't recall that specifically.

Q Would you look at your letter of february 24, 1970?

A This is to Mr. Zola?

well, my phone bill will run over $100 and him offernign $100 in addition to the replacement wasn't very satisfactory.

And then we had several conversations after that which he still said, "Well, you are recording the conversations and I will refuse to discuss it with you except through the mails." I did not record any conversations after that and so toldhim, but -- And, I wastold to file -- I had been advised by Donath as agent and manager for AAA Con the first forms would be coming from the New York Office.

Q Did you receive any forms?

A No, sir.

Mr. Zola told me to settle with my own company, that it was a physical damage claim. But anyway that Wednesday, I asked him -- ifyou don't have anyting to say, you don't have any proposition, you don't have any suggestions on it? And, he said, "No." And I said, "Well, thank you." And that is the last conversation in reference to this thin g other than in New York, when just an introduction that I have had with him.

At that time, as I mentioned, I contacted Fritz Con and bent his ear for about 45 minutes on the way that I felt this thing was handled and the loss of the car and I guess that about covers it.

Q Do you have any written correspondance from AAA Con in New York?

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the road and hit the barricade."

Hurley then asked me if I would, rather than prepare an affidavit stating that he dozed off if I would go along and state that -- in preparation of my affidavit -- that the accident occurred as he recounted, but pulling back onto the road and looking behind for oncoming cars he ran off the road and hit the barricade.

I said I would. I sent the affidavit to Hurley and he never did forward them to me.

Q Do you have copies of the affidavit that you prepared for his signature?

A I have copies of the affidavit, however, they are unsigned.

Q Okay. And these --

Mr. Browning: Mr. Examiner, I would like to have marked a multi-page document for identification.

Mr. Reilly: An unsigned proposed affidavit of Daniel W. Hurley is marked for identification as Exhibit 111.

(Bureau's Exhibit No. 111.
witness Levine, was marked
for identification.)

Q (By Mr. Browning) Is what we have marked for identification as exhibit No. 111 a photocopy of the affidavit that you sent to Hurley?

A It is a photocopy of the affidavit that I sent to Mr. Hurley. Yes, it is.

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Q Okay.

Do you have a copy of your letter that you -- where you forwarded the affidavit to Hurley?

A Yes. It is dated October 7th of '71.

It says, "Dear Mr. Hurley, as per our conversation of October 6th of '71, please find enclosed herewith the original and two copies of an affidavit which I have prepared regarding theaccident of August 21st, 1971 in Nash County, North CArolina.

Please note in the affidavit that I have omitted our discussion wherein you said that you fell asleep and ran off the road causing damage to the vehicle. But that I have gone along with your story that the accident was caused by pulling back onto the road andlooking behind you for oncoming traffic.

I request that you sign the original and one copy fo the affidavit before a Notary Public and return same to my offices. The third copy of it is for your records. I also enclosed a copy of the letter that I received from AAA Con Auto Transport, Inc., wherein the company has denied payment of my father's claim inasmuch as they claim damage to the car was caused by operational failure.

Thanking you for your cooperation in this matter, I am, Very truly yours."

Q And that was sent by you; is that correct?

A Yes, it was.

Q Okay.

A They had already picked up the car from Mr. Young and they had possession of the car. I ddn't understand what the delay was. So, he said that there -- that he had no drivers yet. I said, "Okay." And, I waited just a little while longer, another week and I called again. At this time he told me that the tires on the car were very bad.

In fact he said that he was going to charge me for storing the car when I had paid him to deliver the car. I had no idea whatsoever that the tires were bad. I had no idea of the condition of the car except that Mr. Young told me the body of the car and the motor of the car was in good shape, condition when he picked it up.

So, at that time I told him that I would take care of it. I called the SEars in Hollywood where I have a charge account. I bought four brand new tires. I arranged to have them put on, balanced and everything at the time. I called them back and told them to please just deliver the car to Sears, that they would mount the tires and balance them and everything else and it was all taken care of.

Also, if the car needed to be oiled or greased, if anything had to be done to the car before it was transported down to go ahead and do it.

Q Was that done, do you know?

A He said that therewas nothing else that needed to be done to the car. He said the only bad thing about the car were the four tires. So, I had four brand new tires put onto the car.

Q Okay. Do you have a bill which you paid?

A I certainly do. That was for the tires.

Q As long as you can read from it is all I need.

Okay. What did the bill come to, ma'am?

A $97.56.

Q What was the date of the bill?

A December 16th.

Q 1970?

A I'm sorry. December 4th. I'm sorry.

Q 1970

A 1970, yes.

Q Okay. Now, where was the location of the Sears store that did the work?

A I have no idea. Thereis no address here thatI can see.

Q In any event, is that the bill thatyou paid at the time you had the car -- the time you had the tires mounted?

A Yes. I had this bill put on my charge account; that is correct. Wait a minute. I think I do have -- yes, I received a letter December 8, 1970.

Q What was thatin connection with?

A "I was contacted by Sears in Hollywood, California today about the tires for the Karmann Gia, however, there is one small problem. You neglected to sign the sales slip in Miami and the people here would not put the tires on the car until they have a signature authorizing the purchase and mounting of the tires."

"If you would please contact the Sears store there in Miami and take care of this matter then wewill be able to have the tires installed on your vehicle and get it started on its way to Miami,Florida. Thank you for your cooperation."

Q Who is that written by?

A Mr. Collins, I believe that is who I spoke with --

Q Mr. Collins of whom?

A AAA Con Auto Transport in Los Angeles.

Q Okay.

Mr. Browing: Mr. Examiner, now --

The Witness: Excuse me. The purchase date of the tires was December 1st, 1970 and Miss Bruno took care of it and --

Q (By Mr. Browning) What are you reading from now?

A I am reading from a letter.

Q The same letter?

A The same letter, but this is just some -- my own writing, a note that I had written down here, the address. I do have the address now of the Sears if you want it.

Q Okay, give it to us.

A That is 5601 Sonevac Boulevard, Los Angeles, Hollywood.

Q I would like to have you identify something.

Mr. Browning: Mr. Examiner, may I havemarked for identification a single-page document which is the bill of Sears that she has just referred to.

Mr. Reilly: Marked for identification as Exhibit 116.

(Bureau's Exhibit No. 116, witness Ferreira, was marked for identification.)

Q (By Mr. Browning) I hand you what has been marked for identification as Exhibit No. 116 and ask you to state whether or not that is a true copy of the document that you have just testified concerning which you have in your possession?

A Yes, sir.

Q Okay.

Mr. Browning: Mr. Examiner, I would like to have another single-page document marked for identification which is a letter of Sid Collin s of AAA Con Auto Transport dated December 8, 1970.

Mr. Reilly: Marked for identification as Exhibit 117.

(Bureau's Exhibit 117, witness Ferreira, was marked for identification.)

Q (By Mr. Browning) I hadn you, Mrs. Ferreira, what has been marked for identification as Exhibit NO. 117 and ask you to state whether or not that is a true an oorect ocpy of the original document to which you have just referred yourself thismorning?

A Yes.

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Q Okay.

All right. What hapened after that, after you got the notification?

A Well, I called California and again I told them that I had taken care of it that they could take the car down immediately and have the tires mounted, which they did on the 4th of December. Then, I again proceeded to wait for the car to be delivered.

They said it would take 10 days to perhaps two weeks. I didn't hear from them an dI called Mr. Freedman again in Miami and he said he didn't know any mor e about it. Then, on the 23rd of December I received a telephone call at my home.

Q What was the date of that?

A The 23rd of December, stating that -- I can't pronounce this man's name that drove the car down.

Q Can you spell it for us?

A S-t-a-r-o-u-t- something -- Straout or Starout.

Q What did he tell you now?

A This was about five-thirty or six in the afternoon and he said that he had had an accident with the car. HE said he was outside of Melbourne, Florida and it was late at night. The accident apparently had happened the previous night, and he said it was about 11:30 and he hit a deer with the car.

Now, this is a '67 Karmann Ghia convertible. It is a very small car and he said he actually hit a deer with it.

I asked him if he was injured and he said no. And, I asked him if there was much damage to the car and he said yes, considerable.

I asked him if he reported the accident to the police and he said not, that he didn't. I asked him why he didn't and he said that because he had hit a deer. He didn't feel that it was important to report it. He didn't hit a pedestrian or another car, hehit a deer.

He left the deer on the side of the road, got in the car and drove away.

Q That is what he told you?

A That is what he told me. So, he said thathe would be arriving in North Miami Beach the following day. He was bringing the car in and I said that was fine, that in the meantime I would notify AAA Con that there had been an accidnet.

Q And did you?

A I certainly did. As soon as I hung up I called Mr. Feldman -- I believe his name is Feldman or Freedman, in Miami, and I told him exactly what this fellow had told me, the driver had told me, that he had had an accident at 11:30 at night, that he hadhit a deer and had failed to report it, and that he would be arriving the next day and there was considerable damage to the car.

Q And then what occurred next? Did the driver show up---

with the car?

A The next afternoon the driver showed up with the car. There were about four other people.

Q Four other people?

A There were four other people with him.

Q Were they in the car?

A No, there one other person in the car with him, the other people were in another car, I guess to give him a ride back. And, he came in. He wasn't injured at all, no bodily injury, but he was incoherent, very incoherent.

Q When he came out of the car --

A When he came into the house. He got out of the car and came into the house. We naturally invited him into the house. We wanted to see what happened. He was very incoherent. He had written a report himself of how the accident happened and had made a little diagram of where the accident was and so on and so forth.

I asked him again why he -- my husband was there . He asked him why he didn't report the accident to the police and again he said the same thing, he just didn't feel that it was necessary, that he wrote out the report himself.

Q Okay. Now, what happened at that point?

A At that point I told him to wait until I again called AAA Con here in Miami and I tried to get in touch with Mr. Freedman again and I waited for about two and a half hours.

[illegible]

And every time I called I got his answering service. This was December 24th -- Now, Christmas Eve afternoon and he could not be reached and he would not return my call.

So, finally after two and a half hours I told these people to leave. They were sitting in the house. This boy was -- I don't know -- I don't believe he had been drinking, but he certainly was incoherent.

Q What did you --

A He only wanted to get out of the house. I explained to him that the day before he -- when he called I spoke to Mr. Freedman and he said do not pay him and do not sign the release.

Q Mr. Freedman of AAA Con told you that?

A Yes, sir.

Q The day before?

A Yes, sir, "do not pay this man the $50 and do not sign the release."

Q Did you sign the release?

A No, sir.

Q Did you pay the man his $50?

A No, sir, I did not. I did exactly what he instructed me to do.

Q Then what happened after that?

A Well, the driver left with these people. He said he was going back to California. I asked him for an address where he could be contacted if necessary and he said that he didn't know exactly where he was going to be, that he was leaving to go back to California.

And, he was very happy just to get out of there.

Q Okay. Did you contact or communicate with AAA Con concerning the damage to the vehicle, and if so, when was that?

A Yes. I waited -- naturally, I had to wait until December 26th, the day after Christmas. In fact, I think I had to wait until the following Monday because Christmas was on a Saturday and I again got in touch with MR. Freedman. HE told me to take the car into any garage that I wanted to go to to get an estimate.

Q Yes.

A And give this estimate to him.

Q Did you do it?

A I did this. I immediately took the car over to Bob Houston Motors and they gave me an estimate. The gave me a copy and I asked them please to sent the original to -- directly AAA Con.

Q You have a copy of the estimate there?

A Yes, I do.

Q What was the estimate?

A $263.31. This was 12/28/70.

Q $263.31?

A Yes, sir.

Mr. Browning: I would like to have this single-page exhibit marked for identification, Mr. Examiner, Bob Houston Motor's Inc., dated December 28, 1970.

Mr. Reilly: Marked for identification as Exhibit 118

(Bureau's Exhibit 118,
witness Ferreira, was marked
for identification.)

Q (By Mr. Browning) I hand you what has been marked for identification as Exhibit 118 and ask you to state whether or not that is a true and correct copy of the document to which you just referred in your testimony?

A Yes, it is.

Q Now, you say you told Mr. Houston to forward the original to AAA Con?

A Yes, I did.

Q Do you know whether or not they did that?

A I certainly do.

Q How do you know that?

A I stood there and watched him while they did it, one copy -- they gave me a copy and they made out the other copy, put it in an envelope, and I had to give them the correct address. I had it with me, AAA Con's office in Miami. I gave them the correct addess and watched the secretary put the letter in the envelope.

Q You didn't mail it for them?

A I didn't mail it, no.

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Q All right.

Were you back in contact with AAA Con after you had done that?

A Yes. I called up Mr. Freedman again.

Q When was that now?

A As soon as I got back from the garage the very same day. I told him that I had a copy of the estimate. I told him that they were sending the original directly to him. He told me at that time that all the insurance business and any accidents or something like that were handled by the office in New York, and he has nothing to do with it. I would have to get in touch with the office in New York.

Q And did you?

A I certainly did. I called collect the first time to Mr. Maxwell.

Q Yes.

A And I explained the situation to him, what had happened with the car and so on and so forth. I also sent the copy that the driver had made of the accident report, in his own -- he wrote it out in his own writing and so on and so forth. I sent that to AAA Con. And, this was all I had, plus the estimate.

I explained this to Mr. Maxwell and I asked him what else I had to do. And, he said nothing, that as long as the claim was in. I asked him how soon the car could be fixed -- infact

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I left the car at Bob Houston Motors because I thought that they would send an adjuster up there an that he would want to see the car.

So, I left it there and he said it was all right to leave the car there and they would take care of it. Now, I didn't hear from these people.

Q From AAA Con?

A From AAA Con, for some time. So, finally I contacctd my lawyer. He told me to go over and get the car and not to leave it there. I went over and picked up the car and brought it back. I contacted AAA Con again and asked them when they were going to send an adjuster and when they were going to have the car fixed?

Mr. Maxwell then told me that -- to go ahead and have the car fixed. He said,"your claim in on file and you might just as well go ahead and have the car fixed."

And, we wanted to because the car had cost us a great deal of money. My husband and I couldn't afford to have this much money tied up in the car. We had to sell the car. WE had to have it repaired and we had to sell thecar. We could not afford to keep it. We had already spent a great deal of money on the car.

So, I said all right, that I would think about having it repaired myslef. I then called my attorney up and asked him and he said -- he advised against it until an adjuster had seen it and until settlement had been made on the claim. He would not have the car fixed.

I took his advice and left the car there. Then, I called Mr. Maxwell again. I also called collect and he wouldn't accept the charges after the first time. So, I had made at least a half a dozen calls to Mr. Maxwell.

Q At your expense?

A Of my own expense.

Q What did he indicate?

A Well, I received so many excuses why the car wasn't being fixed. I asked him several times the name of his insurance company. He would not tell me his insurance company -- he had no idea who the insurance company was. I called AAA Con down here again and inquired if they knew who the insurance company was and they said they didn't know who the company was.

I spoke with a Mr. Zola and I asked him -- I told him that I would like to get in touch with the company that I wanted to make arrangemetns and to please send an adjuster. I had the car in my driveway and I wanted someone to see it so we could get it fixed.

And, he referred me back to Mr. Maxwell in the claims department. And then we corresponded back and forth. They requested some picutres.

Q Did you send any pictures?

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A I took some pictures -- I borrowed a neighbor's camera, it is a little inexpensive polaroid and I took some pictures but the car was white and the pictures didn't turn out too well. I am not a professional photographer and the pictures didn't come out that good. But, I sent them anyway.

After that --well, there was quite a bit of corresponding back and forth, one thing and another, and after that they wrote and denied our claim.

Q When did they write to you, ma'am?

A I have the letter here from Mr. Maxwell.

"Dear Mr. Mr. Ferreira: This is to advise you that the Bill of Lading under which your car was transported, provided that retnetions of any part of the contract price constitutes full settlement and satisfies all claims. Your claim is hereby denied."

"If you have any additional facts, we will be glad to receive and review the same. Very truly yours, Bob Maxwell, Claims Department."

Q What is the date of that letter?

A That was March 19th, 1971.

Oh, excuse me. I am sorry. Mr. Maxwell had also asked for more information.

Q This was prior to the letter, March 19th letter?

A Prior to this letter. This was in January and I wrote him a long letter -- if you would like I will read it.

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Q All right. Go ahead.

"Dear Mr. Maxwell: In response to your letter received 1/9/71 I shall try to give you any and all --

Q That is a long letter. Just a minute. I think I have got it here.

A Yes, it is.

Q Okay.

A It was -- Mr. Maxwell had requested more information so I wrote him this letter which is all the information that I could possibly give him.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a single page document which the witness has just referred to, a letter of hers to Mr. Maxwell on January 11, 1971.

Mr. Reilly: It is marked for identification as Exhibit 119.

(Bureau's Exhibit No. 119, witness Ferreira, was marked for identification.)

Q (By Mr. Browning) I hand you, Mrs. Ferreira, an exhibit, 119, and ask you to state whether or not that is a true and correct copy of the original document with the exception that the paper apparently was not long enough and omits the name of your husband, Carl Ferreira?

A Right.

Q Is that at the bottom of your letter?

A Yes.

Q Is that the one that you have in your file?

A That is correct.

Q That is the carbon you have in your file?

A Yes, it is.

Q Is that a true and correct copy of what you have got, other than that?

A Yes, it is exactly.

Q Now, in response to the letter by AAA Con was what, this letter of March 19th?

A In response to the January 11th letter I received a February 2nd, 1971 letter from Bob Maxwell.

Q What did that say? You had better read that if you would if it is not too long.

What is that, February 2nd, 1971?

A YEs.

Q Can you read this for the record, please?

A Yes.

"Carl Ferreira, 2173 N.E. 180th Street, North Miami Beach, Florida. Dear sir, would you please send me photos of the damage claimed as soon as possible? In my January 5th, 1971 question I asked for photos and you never sent them, so please send them at once, Yours, Bob Maxwell."

Q Did you send them?

A Yes, I did.

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contrary to commission policy.

Q Do you have a covering letter with that?

A No, I am sorry, I don't. I have quite a few of the letters -- there was much more correspondance in this but --

Q Do you recall when you sent those?

A The photographs I sent immediately afterwards.

Q All right.

Now, what next occurred?

A Well, then after that is when I received the letters, as far as I can remember now, and with the letters that I have here. I received a letter from a Bob Maxwell dated March 19th, 1971 where he refused the claim.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a single-paged document, Bob Maxwell, March 19, 1971, to Mr. Carl Ferreira.

Mr. Reilly: Marked for identification as Exhibit 120.

(Bureau's Exhibit No. 120,
witness Ferreira, was marked
for identification.)

Q (By Mr. Ferreira) I hand you what has been marked for identification as Exhibit 120 and ask you to state whether or not that is a true and correct copy of what you have got in your possession from Mr. Maxwell, about which you just testified?

A Yes, it is.

Q All right.

A I called Mr. Maxwell when I received this and I told him that I was not satisfied at all.

Q Okay.

There is one alteration and that is a mark that somebody stuck on thephotocopy which is 120 -- other than that is it a true and correct copy of the original document -- just compare them if you would?

A YEs.

Q With the exception of that check mark which appears on this and does not appear on your copy?

A Right.

Q Now, you called him at this point?

A I called Mr. Maxwell again at this point and I told him that I didn't understand this, that the car was insured -- that it says rigt on thebottom of the contract not to pay the driver if the car was not delivered in perfect condition or satisfactory condition, which it wasn't.

I fulfilled everything that they asked me to do. They asked for more information. I wrote them a long letter and did everything,I got another estimate also on the car to have the car fixed. I did everything I could possibly do.

I again called Mr. Maxwell and told him this. And, he said that as far as he was concerned the $50 that I did not pay the driver would cover damages on the car. And, the damage on the car was $280 - some.

Q And did you dispose of that car; is that correct?

A Yes.

Q You sold it?

A I had to. the car -- we kept the car in our driveway for five months waiting for an adjuster to come up. Not at any time, at any time did we see an adjuster from any insurance company. In fact, I still didn't know the insurance company. I still had no idea.

Q You didn't know the name of it?

A The name of the insurance company?

Q Right.

A No. We kept the car for five months and even that was a hardship for us because we had to keep thecar payments up and we were out of a great deal of money and finally, I called Mr. Maxwell and I told him that I was going to have the car repaired.

I had brought it into th egarage and dropped it off that morning and that I was going to have the car repaired.

Q When was that that you told him?

A This was about five months later. I an sorry, I don't have the exact --

Q About five months later?

A Yes.

Q Five months after March?

A I don't have the exact -- Five months after the accident -- December, January, February, March, April. It was about in April. I said that I was going to have the car repaired and he said, "Are you taking upon yourself to have the car repaired?" And, I said, "No, I am not. You have told me to go ahead and have the car repaired. Mr. Freedman in Miami told me to go ahead and have the car repaired. I didn't because my lawyer advised against it. But now, we can't wait any longer. We can't afford to keep this car. We have to have the car repaired so that we can sell it."

"We have too much money"-- there was $900 owed to the bank on the car. And this money, my husband and I had to pay plus the money we had already spent on the car.

Q Did you have the car repaired?

A We had the car repaired.

Q Do you recall how much?

A $289 to have the car repaired.

Q Now, did you get any insurance -- did you have any insurance coverage at all for that?

A No.

On the repossessed car, the minute you repossess the car the insurance cancells out.

Q So, that was paid out of your own pocket?

A I had to pay it out, yes, sir, plus the tires, plus the car sitting for so long we couldn't use the car because it was damaged so badly that we had to have the motor tuned up and everything had to be done to the car.

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Q Have you heard any more since that time from AAA Con?

A I received one letter after this letter from Mr. Maxwell, I received a letter from Mr. Zola.

Q When was that?

A November 4th, 1971.

Q 1971?

A Yes.

Q What did that letter state?

A This stated -- excuse me. After we received this letter from Bob Maxwell there was some more correspondance from AAA Con. I do not have it. It has been misplaced. I have no idea where it is.

Q What was the substance of the correspondance, in any event, if you recall?

A It was for the claim of having the car fixed and everything, but I don't have it. I sent all of this to New York to my brother-in-law and he only sent half of the papers back to me.

Q Did AAA Con at any time indicate that they were willing to pay anything on the claim?

A No, never.

Q Never?

A Never.

Q Okay.

Now, you mentioned the next piece of correspondance from

AAA Con that you got which was dated November 4th?

A 4th, 1971.

Q Would you read that again, please, into the record?

A Yes.

"Dear Mr. Ferreira, from the information received and made available to us by the Interstate Commerce Commission it appears that there may be a question in your mind concerning your claim against our company and the disposition thereof."

"We would appreciate an opportunity to hear from you to be advised of your current position in this matter so that we may be in a position to review the claim in view of any disposition and/or settlement additional facts may warrant."

"Very truly yours, AAA Con Auto Transport, Ralph J. Zola, Executive Vice President."

Q Was that signed by Mr. Zola?

A No. There is no signature on it at all.

Q It is blank?

A It is just a blank, no signature on it at all.

Q Does it have AAA Con Auto Transport, INc., letterhead?

A The letterheading, yes. It says AAA Con.

Q Go on, please.

A Naturally, when they denied our claim previous to November 4th when they had denied the claim, I again went to an attorney and paid attorney fees to ask them whatcould be done about it. And they said that it would cost us about

$150 just our court porceedings and even then it would be very difficult because the insurance company -- the adjustment office was in New York, the car came from California, we were here in Florida, we couldn't afford to fly to New York to open up a case up there.

So, he just said that unfortuantely companies like this get away with these things and there is nothing in the world we can do about it. I couldn't afford to pay an attorney $150 just to open up the case.

Q Did you at any time get a bill of lading that covered that shipment with that movement -- that bill of lading there in your possession, did it cover the movement?

A Yes.

Q How did you get that?

A When the driver delivered the car to us on December 24th he gave me this.

Mr. Browning: I would like to have a single-page document marked for identification, the bill of lading of AAA Con 4 -- F 4896.

Mr. Reilly: Marked for identification as Exhibit No. 121.

(Bureau's Exhibit No. 121,
witness Ferreira, was marked
for identification.)

Q (By Mr. Browning: I hand you what has been marked for identification as Exhibit No. 121 and ask you to state whether or not that is a photocopy of the document that you have in your possession?

A Yes.

Q Now, Mrs. Ferreira, is --

Mr. Kiel: (Interposing) Mr. Browning, some of the information of the condition of the car in my copy is not clear and I presume the same is true of -- would you have the witness give us that information so that it could be added in?

I think this is going to be important in the disposition of this witness's testimony.

Q (By Mr. Browning) Will you start with the left column, please, and read that, right-front fender -- what is the indication in there?

A P.

Q Okay.

What is the next one, Front bumper?

A Front bumper --

Mr. Kiel: The ones with the dashes we can see that are not there.

Q (By Mr. Browning) Left front fender --

A D and P.

Q And the next one RF vent window?

A "None."

Q How about that LF vent window?

A "None," again.

Q Then in the next colume, just indicate the LF door. What does that say?

A I don't know. It has D and F. I think it is the molding, m-o-l-d-i=n-g, D and F.

Q Moulding dented and scratched and the LF window?

A None.

Q LR door?

A None.

Q LR panel?

A Molding dented and scratched, D and S.

Frankly, it is D and S.

Q The next one wherean entry appears is spare tire wheel. Do you have anything there?

A No spare.

Q Next entry, the entry under RR panel, what is that?

A That is molding. I don't know. It looks like XP and S.

Q The next one --

Mr. Kiel: May we go back a minute? In the LR panel between the word "molding" and D and S; wasn't there an X in that place too, in the prior column?

The Wintess: Yes.

Q (By Mr. Browning) Right rear window is none; is that right?

A Yes.

Q And none is right rear door, correst?

A Yes.

Q And there is something down at the right -- RF door, what is that?

A D.

Q Hub caps? Four, right?

A Yes.

Q Keys, 1; right?

A Yes.

Q RR fender, whatever that is?

A D and S.

Q As best you can make out from the copy you have?

A Yes.

Q And LR fender, what does that say?

A P.

Mr. Browning: That is all I have of this witness at this time, Mr. Examiner, and I tender her for cross-examination.

CROSS-EXAMINATION

Q (By Mr. Kiel) Ma'am, the copy which you have is a yellow paper that says at the bottom, Car owner's copy," a copy which is Exhibit 121, would you search your recollection again and let me know whether or not you might possibly have received this from Mr. Yung after the car was picked up in

DX 621

the mail?

A This copy here, sir?

Q Yes, Exhibit 121, the original?

A No, sir, I never did. This gentleman here gave me this copy when he arrived.

Q You mean the driver? Is that what you are referring to?

A The driver.

Q She pointed to the picture --

Mr. Browning: Yes, because the reporter doesn't know what you are --

The Witness: I'm sorry.

Q (By Mr. Kiel) Did you ever ask Mr. Young for a receipt that he had turned the car over to AAA Con?

A I believe Mr. Forbes at the First National Bank in Hollywood has this.

Q You never got anything from Mr. Young?

A No, I don't believe I did.

Q And he was your agent who tendered the car to AAA Con Auto Transport?

A That's correct.

Q Now, did he report to you at the time the automobile was turned over to AAA Con?

A Oh, I'm sorry, sir. Excuse me. I am sorry. I did get a -- I got an invoice from Mr. Young and the condition of the car. Yes, I did. That is a copy of it at the also.

Q And didn't he indicate to you that the right front fender was pitted, the left front fender was dented and pitted and that the left front door molding was missing and that the door was dented and scratched, that the left rear panel molding wasmissing and that it was dented and pitted -- thetrunk lid was dented and scratched, that the right rear panel molding was missing and that it was dented and scratched, that the right front door was dented and the right rear fender was dented and scratched and that the left rear fender was pitted?

Mr. Browning: What are you reading from, the bill of lading?

The Witness: No, sir.

Q (By Mr. Kiel) You never the car when it was tendered to AAA Con; did you?

A No, sir. Mr. Ponte had the car in California. I was never in California, but his copy that he sent to me -- he gave a description of the car also and there is no where near this description. No where near this description.

Q Do you have Mr. Young's correspondance to you explaining the condition of the car?

A No, I don't. I told you, sir, that there was quite a lot of other correspondance that either has been misplaced or lost. But, Mr. Forbes at the First National Bank of Hollywood does have a copy of it. If I had known that I would lave needed it I would have gone up yesterday and picked it up.

Q And Mr. Young, I assume, didn't indicate to you that he signed this document, EXhibit 121?

A Did he sign this document?

Q He didn't say that he did; did he?

A I never spoke to Mr. Young personally, sir.

Q But you assume that this was done and this is how the car began its trip?

A Well, yes, I assume.

Q And that the -- he never sent you this document in any event, when --

A No.

Q Ma'am, my copy doesn't clearly show that there is a signature of Mr. Young, but your copy does show that there is a signature on that that didn't reproduce; isn't that correct? A signature of someone by the name of Young, Exhibit 121?

A It appears to be that way, yes.

Q Now, as I understand the automobiel in question is a 1967 automobile?

A Karmann Ghia.

Q Yes.

And at the time that it was tendered to the carrier it had on it approximately 55,828 miles which is the figure shown on Exhibit 118, it would be that less the drive across the country?

A Yes, 55,828.

Q That was --

A That is when it arrived here. That was the mileage, yes, sir.

Q So that we can get some dates here, you were asked about a number of things and as I understand the sequence of events after the car was tendered to AAA Con did they -- that they informed you that the tires on the car at that time were not suitable for travelling across the United States and they said for you to get tires?

A That was at a much later date, yes.

Q And what date did they tell you to get the tires?

A I had called California to inquire why the car wasn't being delivered at that time and that's when they informed me that the tires needed -- it needed new tires.

And, it must have been about the 1st of December or the end of November because -- no, I am sorry. It was about the 1st of December because as soon as I had talked with them in California and they told me the condition of the tires I went that same exact day to sears and purchased the tires for the car.

Q That was December the 4th?

A December the 4th.

Q And you didn't purchase the tires from Miss Bruno on December the 1st?

A The purchase date was December the 1st.

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Q I'm sorry?

A The purchase date was December the 1st, yes.

Q Will you look at Exhibit 116, which is the Sears document?

A Yes.

Q Upper right hand corner doesn't it say -- doesn't it indicate the date of the order as being 12/4/70?

A Well, they couldn't put the tires on. The purchase date was the 1st. They couldn't mount the tires until the 4th. If you will read the letter, because I failed to sign the purchase orrder -- slip here in Miami and therefore, they wouldn't put the tires on the car until I signed the purchase slip.

And that is the delay of the four days.

Q Is it your statement that you paid the $97.56 that was on December the 1st?

Mr. Reilly: She put this on a charge adcount.

The Witness: I put this on a charge account.

Q (By Mr. Kiel) The date of the letter of December 8th, which is Exhibit 117, there is some handwriting above the typewritten portion of the letter. Did you put that in?

A Yes, sir.

Q After you received the letter?

A Yes, sir.

Mr. Reilly: You think it was before she received the letter, Mr. Kiel?

Q (By Mr. Kiel) Well now, ma'am, would you look at Exhibit 117; doesn't that indicate that AAA Con was contacted on the -- December 8th by Sears in California indicating that they were contacted today, being the date of the letter with respect to attaching the tires or the placing of the tires?

Mr. Browning: Is that 118?

Mr. Kiel: Exhibit 117.

Mr. Browning: Mr. Examiner, I submit it says what it says.

Mr. Reilly: I think all these documents say what they say. Sears put on their bill December the 4th. Now, I agree that December the 8th is four days later than December the 4th, but I don't think this witness can answer as to the descrepancy.

Mr. Kiel: Well, the only thing is that we are concerned about a number of things. One of which is that she said that on December 4th she made the second visit to Sears and at thattime she had been advised that by the applicant or by AAA Con, rather, that they had been advised --

Mr. Reilly: All right. What is the relevance?

Mr. Kiel: The relevance is this, that either -- apparently the witness is confused about the dates and the record isn't clear.

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Mr. Browning: What is the difference, Mr. Examiner?

Mr. Reilly: What difference does it make? She is not talking about a late delivery of the car in any event. She is talking about damages flowing out of an accident. I agree that she is not very happy about a late delivery, but that is not what her complaint is here.

The Witness: If I can --

Mr. Reilly: Don't say anything more, Miss Witness.

Q (By Mr. Kiel) Ma'am, would you look at Exhibit 118, which is the estimate from Bob Houston Motors?

A (Witness complies.)

Q The first item on that is LF fender; do you see that, ma'am?

A Yes, sir.

Q And it shows what appears to be 12 hours labor.

Would you look at Exhibit 21 and doesn't that document indicate that when the car was tendered to AAA Con the left front fender was D and P or dented and pitted?

A Yes, sir. That is what the copy says.

Q And would you look at the next item on Exhibit 118, which is the estimate where it says L/side door, five hours labor and compare that with Exhibit 21 -- doesn't Exhibit 21 indicate a left door molding missing and dented and scratched?

Mr. Browning: Mr. Examiner, I sumbit this is all in the form of Exhibits and that is the reason we put them in so that any argumentation about what is which that he can make argument on brief, or however he wanted to do it, but it is obvious that these documents -- waht they say and I submit that this unduly burdensome on the record.

Mr. Kiel: I dont' think so. I think we have a right to develop the facts. This lady is here, somewhat concerned and perhaps if she will go through this with me she will have some better understanding of certain of the amounts of her claim and why it was denied in part.

Mr. Browning: Mr. Examiner, that would be irrelevant and immaterial.

Mr. Reilly: I don't see the pertinency. This does state that that is what Bob Houston Motors put on their estimate. We havealready gone through all of the matters on the deficiencies or alleged deficiencies and they are demonstrated on Exhibit 21.

I think it is all just repetitive.

Mr. Kiel: The purpose of this is just to showclearly that there was damage to the car, that the carrier was not responsible for and which did not occur as a result of the accident.

Mr. Reilly: You may be assured that I will read Exhibit 118 in conjunction with 121, Mr. Kiel.

Q (By Mr. Kiel) Looking at the exhibits -- 118, isn't it a fact, ma'am that part of the repair costs show paint as new?

Mr. Browning: Excuse me, Mr. Examiner, I believe it says paint as needed

The Witness: "Paint as needed." Not "new."

Mr. Reilly: It looks like needed to me.

The Witness: Paint as necessary, ness.

Q (By Mr. Kiel) And that would be for all of the items as listed above as may be necessary?

Did you expect that the AAA Con people should be responsible to restore the car to a condition which was different from that in which they received the car?

A No, sir. I do not.

I expect AAA Con to pay for the damage that their driver did to the car while I paid AAA Con $100 to tranpsort the car. When I received the car -- the estimate here -- that whole side of the car was smashed beyond belief. There was no headlight. There was no fender hardly at all.

You could barely open the door, whre it was smashed in so terribly bad. The back was the same way. As far as the other things that are concerned that you are talking about, dented and scratched and so on and so forth, as I said, I have a copy from Mr. Young. And, his does not comply with yours.

And, unfortunately I don't have it with me.

Q The only page you brought with Mr. Young's signature is